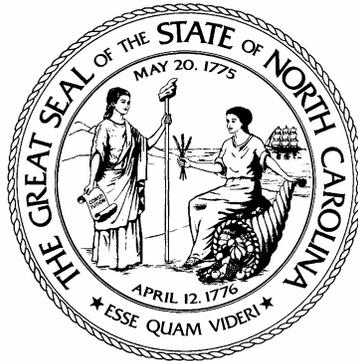


ENVIRONMENTAL REVIEW COMMISSION



REPORT TO THE
2003 GENERAL ASSEMBLY
OF NORTH CAROLINA

2004 REGULAR SESSION

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May 11, 2004

TO THE MEMBERS OF THE 2003 GENERAL ASSEMBLY

Pursuant Article 12D of the North Carolina General Statutes, the Environmental Review Commission submits its report and recommendations to the 2003 General Assembly for the 2004 Regular Session.

Respectfully submitted,

Handwritten signature of Senator Charles W. Albertson in black ink, written over a horizontal line.

Senator Charles W. Albertson

Handwritten signature of Representative Pryor A. Gibson, III in black ink, written over a horizontal line.

Representative Pryor A. Gibson, III

Handwritten signature of Senator Daniel G. Clodfelter in black ink, written over a horizontal line.

Senator Daniel G. Clodfelter

Handwritten signature of Representative Daniel F. McComas in blue ink, written over a horizontal line.

Representative Daniel F. McComas

Co-chairs
Environmental Review Commission



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2003-2004

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**North Carolina General Statutes
ARTICLE 12D.**

Environmental Review Commission.

§ 120-70.41. Commission established.

The Environmental Review Commission is hereby established.

§ 120-70.42. Membership; cochaIRS; vacancies; quorum.

(a) The Environmental Review Commission shall consist of six Senators appointed by the President Pro Tempore of the Senate, six Representatives appointed by the Speaker of the House of Representatives, who shall serve at the pleasure of their appointing officer, the Chair or a Cochair of the Senate Committee on Agriculture, Environment, and Natural Resources or the equivalent committee, the Chair or a Cochair of the House of Representatives Committee on Environment and Natural Resources or the equivalent committee, the Chair or a Cochair of the Senate Committee on Appropriations – Natural and Economic Resources or the equivalent committee, and the Chair or a Cochair of the House of Representatives Committee on Appropriations – Natural and Economic Resources or the equivalent committee.

(b) The President Pro Tempore of the Senate shall designate one Senator to serve as cochair and the Speaker of the House of Representatives shall designate one Representative to serve as cochair.

(c) Except as otherwise provided in this subsection, a member of the Commission shall continue to serve for so long as the member remains a member of the General Assembly and no successor has been appointed. A member of the Commission who does not seek reelection or is not reelected to the General Assembly may complete a term of service on the Commission until the day on which a new General Assembly convenes. A member of the Commission who resigns or is removed from service in the General Assembly shall be deemed to have resigned or been removed from service on the Commission. Any vacancy that occurs on the Environmental Review Commission shall be filled in the same manner as the original appointment.

(d) A quorum of the Environmental Review Commission shall consist of nine members.

§ 120-70.43. Powers and duties.

(a) The Environmental Review Commission shall have the following powers and duties:

(1) To evaluate actions of all boards, commissions, departments, and other agencies of the State and local governments as such actions relate to the environment or protection of the environment, including but not limited to an evaluation of:

- a. Benefits of each program relative to costs;
- b. Achievement of program goals;
- c. Use of measures by which the success or failure of a program can be measured; and
- d. Conformity with legislative intent;

(2) To study on a continuing basis the organization of State government as it relates to the environment or to the protection of public health and the environment, including but not limited to:

- a. Improvements in administrative structure, practices, and procedures;

- b. Increased integration and coordination of programs and functions;
 - c. Increased efficiency in budgeting and use of resources;
 - d. Efficient administration of licensing, permitting, and grant programs;
 - e. Prompt, effective response to environmental emergencies;
 - f. Opportunities for effective citizen participation; and
 - g. Broadening of career opportunities for professional staff;
- (3) To make any recommendations it deems appropriate regarding the reorganization and consolidation of environmental regulatory agencies and the recodification of statutes relating to the environment, including but not limited to:
- a. Ways in which agencies may operate more efficiently and economically;
 - b. Ways in which agencies can provide better services to the State and to the people; and
 - c. Instances in which functions of agencies are duplicative, overlapping, incomplete in scope or coverage, fail to accomplish legislative objectives, or for any other reason should be redefined or redistributed;
- (4) To review and evaluate changes in federal law and regulations, relevant court decisions, and changes in technology affecting the environment or protection of the environment;
- (5) To review existing and proposed State law and rules affecting the environment or protection of the environment and to determine whether any modification of law or rules is in the public interest;
- (6) To make reports and recommendations, including draft legislation, to the General Assembly from time to time as to any matter relating to the powers and duties set out in this section; and
- (7) To undertake such additional studies as it deems appropriate or as may from time to time be requested by the President Pro Tempore of the Senate, the Speaker of the House of Representatives, either house of the General Assembly, the Legislative Research Commission, the Joint Legislative Commission on Governmental Operations, the Joint Legislative Utility Review Committee, or the Joint Select Committee on Low-Level Radioactive Waste and to make such reports and recommendations to the General Assembly regarding such studies as it deems appropriate; provided that the Environmental Review Commission shall not undertake any study which the General Assembly has assigned to another legislative commission or committee.
- (b) The Environmental Review Commission may continue the study of environmental agency consolidation and reorganization. The study of environmental agency consolidation shall include, but is not limited to:
- (1) Monitoring the implementation of Session Laws 1989, c. 727;
 - (2) Evaluation of the organization, programs, and operation of the Department of Environment and Natural Resources;
 - (3) Evaluation of the organization, functions, powers, and duties of the components of the Department of Environment and Natural Resources, including boards, commissions, councils, and regional offices; and

- (4) Recodification of the General Statutes relating to the environment and environmental agencies.
- (c) In addition to its general powers and duties, the Environmental Review Commission shall have the following powers and duties with respect to hazardous waste management:
 - (1) To study the current and projected need for hazardous waste treatment, storage, and disposal capacity in the State in light of anticipated generation of hazardous waste and alternatives for hazardous waste treatment and disposal;
 - (2) To evaluate the potential for the development of additional hazardous waste treatment, storage, and disposal capacity by the private sector;
 - (3) To study the necessity for and scope of hazardous waste treatment, storage, and disposal facilities which are sited, owned, or operated by the State;
 - (4) To review progress in securing a volunteer county to host a hazardous waste treatment facility;
 - (5) To study incentives and compensation for the community which hosts, either voluntarily or involuntarily, a hazardous waste treatment facility, including any additional incentives and compensation which may be needed, whether there should be differential compensation for a volunteer county, options for use of funds by local governments, distribution of compensation among local governments, and methods of providing flexibility in the development of an incentives and compensation package for a particular local community;
 - (6) To review progress in developing interstate agreements for the treatment, storage, and disposal of hazardous waste;
 - (7) To assist in the development of cooperative, comprehensive regional approach to hazardous waste treatment and disposal;
 - (8),(9) Repealed by Session Laws 2001-474, s. 12.
 - (10) To study the capacity assurance requirement under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. 9601 et seq., as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613, as amended as it relates to the continued eligibility of North Carolina for remedial actions under Superfund;
 - (11) To study alternatives available to the State for dealing with hazardous waste and the ramifications of those alternatives; and
 - (12) To receive and evaluate reports of every State agency, board, and commission which has any power or duty with respect to hazardous waste management.

§ 120-70.44. Additional powers.

The Environmental Review Commission, while in the discharge of official duties, may exercise all the powers provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Environmental Review Commission may meet at any time upon the call of either cochairman, whether or not the General Assembly is in session. The Environmental Review Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

Notwithstanding any rule or resolution to the contrary, proposed legislation to implement any recommendation of the Environmental Review Commission regarding any study the Environmental Review Commission is authorized to undertake or any report authorized or

required to be made by or to the Environmental Review Commission may be introduced and considered during any session of the General Assembly.

§ 120-70.45. Compensation and expenses of members.

Members of the Environmental Review Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1.

§ 120-70.46. Staffing.

The Legislative Services Officer shall assign as staff to the Environmental Review Commission professional employees of the General Assembly, as approved by the Legislative Services Commission. Clerical staff shall be assigned to the Environmental Review Commission through the offices of the Supervisor of Clerks of the Senate and Supervisor of Clerks of the House of Representatives. The expenses of employment of clerical staff shall be borne by the Environmental Review Commission.

§ 120-70.47. Funding.

From funds available to the General Assembly, the Legislative Services Commission shall allocate monies to fund the work of the Environmental Review Commission.

COMMISSION PROCEEDINGS

The Environmental Review Commission met seven times: 6 February 2004, 24 February 2004, 25 March 2004, 20 April 2004, 22 April 2004, 5 May 2004, and 11 May 2004. A meeting scheduled for 17 December 2003 was cancelled due to a scheduling conflict. A meeting scheduled for 27 January 2004 was cancelled due to inclement weather.

The Commission also conducted three site visits during the interim. On 26 March 2004, members and staff of the Commission toured the Belews Creek Steam Station operated by Duke Energy in southeastern Stokes County. The purpose of the site visit was to observe the emissions reduction equipment installed at the facility to comply with federal Clean Air Act requirements and to also review Duke Energy's plans for complying with the Clean Smokestacks Act (S.L. 2002-4). In conjunction with the business meeting held on 22 April 2004, members and staff of the Commission toured Gorges State Park in Transylvania County on that day and Dupont State Forest in Transylvania and Henderson County on 23 April 2004.

In fulfillment of its duty to provide legislative oversight of matters related to protection of the environment, environmental health, and conservation of natural resources, the Commission received numerous reports on various topics. A table that sets out the reports that are required to be made to the Commission, which reports have been received, and the disposition of those reports (presented orally before the Commission, or distributed to members of the Commission as read-only reports) is included in this report as Appendix I.

A summary of the agenda items for each meeting follows below. In addition to the listed agenda items, the Commission Counsel presented an oral report and explanation of agenda items to the Commission at each meeting. Detailed minutes of each meeting, with attachments, are being prepared by Commission staff and will be available in the Legislative Library.

6 February 2004

Discussion of procedural and substantive issues involved in the development, adoption, and implementation of the Phase II stormwater rules and programs to control stormwater runoff

Annual report on the stormwater management program (G.S. 143-214.7(e));
Explanation of the development and substantive provisions of the Phase II
stormwater rules

Robin W. Smith, Assistant Secretary for Policy and Planning
DENR

Report on the review of the Phase II stormwater rules by the Rules Review
Commission

Joseph DeLuca, Staff Director
Rules Review Commission

Comment on the Phase II stormwater rules by interested parties

Lisa D. Martin, Director of Regulatory Affairs
North Carolina Home Builders Association

Richard A. Zechini, Director of Regulatory Affairs
North Carolina Association of Realtors

Craig A. Bromby, Attorney-at-Law
Hunton & Williams, LLP,
Representing the Business Alliance for a Sound Economy

Kimberly S. Hibbard, Associate General Counsel
North Carolina League of Municipalities

Paul A. Meyer, Assistant General Counsel
North Carolina Association of County Commissioners

Trip Van Noppen, Carolinas Office Director
Southern Environmental Law Center

24 February 2004

Quarterly reports by the Environmental Management Commission (EMC) as to its operations, activities, programs, and progress during 2003 (G.S. 143B-282(b)); Annual report on progress in developing and implementing basinwide water quality management plans (G.S. 143-215.8B(d))

Dr. David H. Moreau, Chairman
Environmental Management Commission

Update on issues related to the Phase II stormwater rules

Robin W. Smith, Assistant Secretary for Policy and Planning
DENR

Discussion of current State and federal air quality issues

Section 126 petitions -- Status of petitions to the Administrator of the United States Environmental Protection Agency (EPA) that may be filed by North Carolina under Section 126 of the federal Clean Air Act for purposes of reducing interstate transport of ozone and its precursors

James C. Gulick, Senior Deputy Attorney General
Environmental Division, North Carolina Department of Justice

New Source Review -- Proposed modification of rules governing Prevention of Significant Deterioration (PSD) and Non-Attainment New Source Review (NSR) Equipment Replacement provision of the Routine Maintenance, Repair, and Replacement Exclusion as a result of the modification of federal air quality

regulations by EPA that became effective 26 December 2003 (the "Labor Day rule")

James C. Gulick, Senior Deputy Attorney General
Environmental Division, North Carolina Department of Justice

Baseline emissions determination, actual-to-future-actual methodology, plantwide applicability limitations, clean units, and pollution control projects as a result of the modification of federal air quality regulations by EPA that became effective 3 March 2003 (the "December rule")

B. Keith Overcash, Director
Division of Air Quality, DENR

Interstate Air Quality Rule -- Regulations proposed by EPA to reduce interstate transport of fine particulate matter and ozone

Marc D. Bernstein, Assistant Attorney General
Environmental Division, North Carolina Department of Justice

Utility Mercury Reductions Rule -- Regulations proposed by EPA to modify national emission standards for hazardous air pollutants (NESHAP) for mercury

Marc D. Bernstein, Assistant Attorney General
Environmental Division, North Carolina Department of Justice

Fine particulate nonattainment -- Process and status of designation of nonattainment areas to comply with the revised national ambient air quality standard (NAAQS) for fine particulate matter (PM_{2.5})

Brock M. Nicholson, Deputy Director
Division of Air Quality, DENR

Ozone nonattainment -- Process and status of designation of nonattainment areas to comply with the revised national ambient air quality standard (NAAQS) for ozone (the 8-hour standard)

Brock M. Nicholson, Deputy Director
Division of Air Quality, DENR

A. Preston Howard, Jr., P.E., President
Manufacturers and Chemical Industry Council of North Carolina

J. David Farren, Senior Attorney
Southern Environmental Law Center

Hydrogen sulfide -- Proposed modification of the rule setting out the acceptable ambient level (AAL) for hydrogen sulfide under rules adopted by the Environmental Management Commission that govern the emission of toxic air pollutants

B. Keith Overcash, Director
Division of Air Quality, DENR

Motor vehicle emissions -- Report on progress in implementing the motor vehicle inspection and maintenance program

Donald D. Redmond, Assistant Chief,
Planning Section, Division of Air Quality, DENR

Annual report on the Inactive Hazardous Sites Program (G.S. 130A-310.10)

Charlotte V. Jesneck, Head
Inactive Hazardous Sites Branch, Superfund Section, Division of
Waste Management, DENR

Report of Superfund cost share fund expenditures for cleanup of sites on the National Priorities List (S.L. 1999-237(15.6)(b))

David J. Lown, Head
Federal Remediation Branch, Superfund Section, Division of Waste
Management, DENR

Annual report on the effectiveness of the Brownfields Property Reuse Act (G.S. 130A-310.40))

Bruce I. Nicholson, Manager
Brownfields Program, Division of Waste Management, DENR

Discussion of options as to the future direction of brownfields and other remediation programs

Dexter R. Matthews, Director
Division of Waste Management, DENR

Interim report on water conservation measures being implemented in the State and incentive programs and other voluntary programs that can help foster water conservation and reuse (S.L. 2002-167, Sec. 5)

John N. Morris, Director
Division of Water Resources, DENR

Annual report on the progress of water supply planning (G.S. 143-355(n))

John N. Morris, Director
Division of Water Resources, DENR

25 March 2004

Status of petitions to the Administrator of the United States Environmental Protection Agency (EPA) filed by North Carolina under Section 126 of the federal Clean Air Act for purposes of reducing interstate transport of ozone and its precursors

James C. Gulick, Senior Deputy Attorney General
Environmental Division, North Carolina Department of Justice

Update on issues related to the Phase II stormwater rules

George F. Givens, Commission Counsel

James C. Gulick, Senior Deputy Attorney General
Environmental Division, North Carolina Department of Justice

Donnell "Trip" Van Noppen, III, Carolinas Office Director
Southern Environmental Law Center

Discussion of issues related to the evaluation of alternative animal waste management technologies to determine whether those technologies are environmentally superior and economically feasible

Charles M. "Mike" Williams, Director
Animal Waste Management Center, North Carolina State University

Joseph Rudek, Senior Scientist
Environmental Defense

Report on the study conducted by the Department of Environment and Natural Resources (DENR) regarding the use of general nondischarge permits for animal waste management systems for swine, cattle, and poultry operations on the land application and potential discharge of nitrogen and phosphorous to surface water and groundwater in the State (S.L. 2003-28, Sec. 2)

Forrest R. Westall, Regional Supervisor
Asheville Regional Office, Division of Water Quality, DENR

Report on the resolution by the 605 Working Group of issues related to Notices of Violation (NOVs) and Notices of Deficiency (NODs) for lagoon freeboard violations due to chronic rainfall conditions

M. Paul Sherman, Environmental Engineer
Division of Water Quality, DENR

Comments on the general nondischarge permit study and on the resolution of issues related to freeboard violations due to chronic rainfall

Beth Anne Mumford, Director of Public Affairs
North Carolina Pork Council

Daniel J. Whittle, Senior Attorney
Environmental Defense

Report on the development of environmental management systems (EMS) for pork producers

Gary Hunt, Director
Division of Pollution Prevention and Environmental Assistance,
DENR

Annual report on permitting and inspecting animal waste management systems/Animal Waste Compliance Report (G.S. 143-215.10M)

Coleen H. Sullins, Deputy Director
Division of Water Quality, DENR

Annual report on the compliance/enforcement of water quality laws for facilities that discharge into surface waters (G.S. 143-215.9A)

Coleen H. Sullins, Deputy Director
Division of Water Quality, DENR

Report on the effectiveness of the Division of Water Quality's program to train and certify individuals to determine the presence of surface waters that would require the application of rules adopted by the Environmental Management Commission for the protection of riparian buffers (S.L. 2001-404, Sec. 2); Report on efforts to update maps and other tools used to indicate the presence of surface water

Robert M. Zarzecki, Environmental Specialist
Wetlands/401 Certification Unit, Division of Water Quality, DENR

David L. Penrose, Environmental Biologist
Wetlands/401 Certification Unit, Division of Water Quality, DENR

Annual report on the status of solid waste management efforts (G.S. 130A-309.06(c))

Paul S. Crissman, Head
Planning and Program Management Branch, Solid Waste Section,
Division of Waste Management, DENR

James C. Coffey, Chief
Solid Waste Section, Division of Waste Management, DENR

Scott B. Mouw, Chief
Community and Business Assistance Section, Division of Pollution
Prevention and Environmental Assistance, DENR

Report on the Energy Policy Council and the revision of the State Energy Plan

Larry E. Shirley, Director
State Energy Office, Department of Administration

20 April 2004

Report on the Friday 26 March 2004 site visit to Belews Creek Steam Station

Senator Hamilton C. Horton, Jr.

Quarterly report by the Environmental Management Commission (EMC) as to its operations, activities, programs, and progress (G.S. 143B-282(b))

Dr. David H. Moreau, Chairman
Environmental Management Commission

Report on and discussion of options to protect water quality and endangered species in the portion of Swift Creek that is located east of Nash County Rd. 1003 (S.L. 2003-433, Sec. 3)

Thomas P. Augspurger, Ecologist
United States Fish and Wildlife Service

Scott Van Horn, Research Supervisor
Division of Inland Fisheries, Wildlife Resources Commission

Thomas A. Reeder, Supervisor
Classification and Standards Unit, Division of Water Quality,
DENR

Lisa D. Martin, Director of Regulatory Affairs
North Carolina Home Builders Association

Derb S. Carter, Senior Attorney
Southern Environmental Law Center

Discussion of the proposed modification of the rule setting out the acceptable ambient level (AAL) for hydrogen sulfide under rules adopted by the Environmental Management Commission that govern the emission of toxic air pollutants

Jeff W. Hudson, Assistant Commission Counsel

B. Keith Overcash, Director
Division of Air Quality, DENR

Leah M. Devlin, D.D.S., M.P.H., State Health Director
Division of Public Health, Department of Health and Human
Services

Michael Shore, Southeast Air Quality Manager
Environmental Defense

A. Preston Howard, Jr., P.E., President
Manufacturers and Chemical Industry Council of North Carolina

Semiannual report on agency litter enforcement, litter prevention, and litter removal efforts (G.S. 147-12(b))

George J. Kapetanakis, Litter Programs Coordinator
Office of Beautification Programs, Department of Transportation

22 April 2004 -- Held at Holiday Inn, Asheville Airport

Report on the designation of the Blue Ridge National Heritage Area by the Western North Carolina Regional Economic Development Commission (AdvantageWest) (S.L. 2001-491, Sec. 18.10)

Betty R. Huskins, Vice President, Public Affairs and Corporate Development, AdvantageWest

Annual report on progress towards attaining the State's goal of protecting one million acres of farmland, open space, and conservation lands (G.S. 113A-241(c))

Richard E. Rogers, Jr., Director
Office of Conservation & Community Affairs, DENR

Annual report on allocations from the Parks and Recreation Trust Fund from the prior fiscal year (G.S. 113-44.15(c))

Lewis R. Ledford, Director
Division of Parks and Recreation, DENR

Annual report on allocations from the Natural Heritage Trust Fund from the prior fiscal year (G.S. 113-77.9(e))

Linda P. Pearsall, Director
North Carolina Natural Heritage Program,
Office of Conservation & Community Affairs, DENR

Annual report on implementation of the Conservation Easements Program and inventory of all conservation easements held by DENR (G.S. 113A-235(c))

Richard E. Rogers, Jr., Director
Office of Conservation & Community Affairs, DENR

Report on the Farmland Preservation Trust Fund

Edgar Miller, Director of Government Relations
Conservation Trust for North Carolina

Gerry Cohn, Director
Southeast Regional Office, American Farmland Trust

Annual Report on implementation of the Clean Water Management Trust Fund (G.S. 113-145.6A(a))

William E. Holman, Executive Director
Clean Water Management Trust Fund

Report by the Land for Tomorrow Coalition on the results of its conservation needs assessment

Katherine "Kate" M. Dixon, Government Relations Project Director
The Nature Conservancy

Report on the Waste Reduction Partners Program

Terry Albrecht, P.E., Program Director
Waste Reduction Partners (administered by Land-of-Sky Regional
Council in special partnership with the Division of Pollution
Prevention and Environmental Assistance, DENR)

5 May 2004

Report on the Thursday 22 April 2004 site visit to Gorges State Park and the Friday 23
April 2004 site visit to DuPont State Forest

Senator Katie G. Dorsett

Information item on the NC GreenPower program

Carl L. Wilkins, Program Manager
NC GreenPower, Advanced Energy

Report on the Express Review Pilot Program and whether the Pilot Program should be
continued or expanded (S.L. 2003-284, Sec. 11.4A(e)); Report on the One-Stop Permit
Assistance and Coordination Program (S.L. 2001-424, Sec. 19.6)

Edythe McKinney, Director
Customer Service Center, DENR

Update on the status of designation of nonattainment areas to comply with the revised
national ambient air standard (NAAQS) for ozone (the 8-hour standard)

Brock M. Nicholson, Deputy Director
Division of Air Quality, DENR

Information item on the Transportation Demand Management Program

Miriam Perry, Director
Public Transportation Division, Department of Transportation

Information item on retrofitting diesel engines (transit and public school buses)

Heather Hildebrandt, Environmental Engineer
Technical Services Section, Division of Air Quality, DENR

Annual report on the status of leaking petroleum underground storage tanks, the State
cleanup funds, and the Groundwater Protection Loan Fund (G.S. 143-215.94M)

Grover Nicholson, Chief
Underground Storage Tank Section, Division of Waste
Management, DENR

Information item on the Virginia Resources Authority's accelerated claim payment
program for underground storage tank fund claims and the development of a national
accelerated claim payment program (NATLUST)

Lindsay Trittipoe, Principal
Commonwealth Acceptance, LLC, Richmond, VA

Annual report on implementation of the Wetlands Restoration Program and use of the Wetlands Restoration Fund (G.S. 143-214.13)

Dempsey E. Benton, Chief Deputy Secretary
DENR

Report on the management of low-level radioactive waste in North Carolina (G.S. 120-70.33(7))

Beverly O. Hall, Chief
Radiation Protection Section, Division of Environmental Health,
DENR

Information item on pending litigation: *State of Alabama, State of Florida, State of Tennessee, Commonwealth of Virginia, and The Southeast Interstate Low-Level Radioactive Waste Management Commission v. State of North Carolina*. [U.S. Supreme Court, No. 132, Original]

John F. Maddrey, Special Deputy Attorney General
North Carolina Department of Justice

11 May 2004

Consideration of legislative proposals for recommendation to the 2004 Regular Session of the General Assembly

Note: A list of legislative proposals approved by the Commission for consideration by the 2004 Regular Session of the 2003 General Assembly is listed below. The text of each legislative proposal is included in this report as Appendix I.

Legislative Proposals

- State Nat. & Hist. Preserve Removals.
- Lower Haw River State Natural Area.
- Tax Credit for Certain Real Prop. Donations.
- Phase II Stormwater Management-1.
- Phase II Stormwater Management-2.
- Drycleaning Solvent Cleanup Act Amendments.
- Phosphorous Nutrient Mgt./Animal Feedlots.
- Limit Liability for Environmental Cleanups.
- Water Conservation/Submeters.
- Environmental Reports Amendments.
- Environmental Technical Corrections.
- ABC Licensees' to Recycle Beverage Containers.
- Leaking UST Fund Liquidity.
- Septic System Setbacks for Pre-1977 Lots.
- Hatteras Village/Temp. Unvegetated Beach Area.

COMMISSION STAFF ACTIVITIES

Planning Meetings

The Commission Counsel held an informal public planning meeting prior to each Environmental Review Commission (ERC) meeting in order to facilitate the development of the agenda for the meetings and to receive input from interested persons regarding the future work of the ERC. These meetings were open to any person who wished to participate. The planning meetings were typically attended by representatives of State agencies, the regulated community, environmental advocacy groups, and local governments. Planning meetings were held on 9 December 2003, 13 January 2004, 10 February 2004, 12 March 2004, and 13 April 2004.

Working Groups

The Commission Counsel holds meetings of interested parties on specific topics upon request. The purpose of these meetings is to gather information and facilitate the exchange of viewpoints on issues related to environmental and natural resources law and policy that are, or may become, the subject of legislative proposals to be considered by the ERC or the General Assembly. The working group meetings are open to any person who wishes to participate. The meetings are typically attended by representatives of State agencies, the regulated community, environmental advocacy groups, local governments, and the Attorney General's office. A primary goal of these working groups is to identify and resolve issues and, whenever possible, to develop compromise legislation on a consensus basis. During the period October 2003 through May 2004, the Commission Counsel conducted working groups on three issues: 1) Chronic rainfall conditions; 2) Phase II Stormwater Management; and 3) the Leaking Petroleum Underground Storage Tank Program.

Chronic Rainfall

As a result of heavy rainfall received in North Carolina during the period starting in October 2002 and ending in September 2003, many animal facilities experienced lagoon freeboard levels in violation of their permits. Under the direction of the Commission, a working group was established to resolve issues related to Notices of Violation (NOV) and Notices of Deficiency (NODs) due to inadequate lagoon freeboard levels related to chronic rainfall conditions. The working group met on four occasions: 29 October 2003, 14 January 2004, 9 February 2004, and 15 March 2004.

The working group was able to reach consensus on these issues. The Division of Water Quality presented its final recommended guidance and revisions to their enforcement policy to the Commission at its 25 March 2004 meeting. A final report summarizing the activities and recommendations of the working group was also distributed to Commission members at that time. The resolution of these issues will not require additional legislation.

Phase II Stormwater Management

In 1999, the U.S. Environmental Protection Agency (EPA) adopted rules extending NPDES (National Pollution Discharge Elimination System) stormwater permitting

requirements to small and medium-sized communities (Phase II). The basic requirement is that "municipal storm sewer systems" must have NPDES permits – this would include any system owned or operated by a city, county, or other state or federal entity. Cities and counties subject to Phase II were required to apply for those permits by March 10, 2003.

For a variety of reasons, the Phase II rulemaking process has been prolonged and the rules for implementing the Phase II program in North Carolina have not been adopted. As a result, the Department of Environment and Natural Resources (DENR), as the delegated permitting agency in North Carolina, has not issued any Phase II permits. NPDES permits are enforceable by EPA, by the State, and by any person through the filing of a citizen suit.

At its 6 February 2004 meeting, the Commission heard from many of the stakeholders and interested parties involved in the Phase II discussions. At the request of the Co-Chairs of the Commission, Commission staff convened a working group to discuss the possibility of legislative actions that could help alleviate some of the controversy surrounding the Phase II Stormwater Management program. Meetings of the working group were held on 27 April 2004, 3 May 2004, and 7 May 2004.

Although the working group was able to identify what it believed to be the primary issues related to implementation of the Phase II Stormwater program, the working group has not been able to resolve all issues or achieve consensus on a proposed bill as of this report. As a result, neither of the legislative proposals recommended for consideration by the General Assembly, "Phase II Stormwater Management-1" and "Phase II Stormwater Management-2" reflect a consensus on this issue. The working group will continue to meet during the 2004 Regular Session.

Leaking Petroleum Underground Storage Tanks

This working group, which dates back to the enactment of the Leaking Petroleum Underground Storage Tank Cleanup Act of 1988 (G.S. 143-215.94A et seq.), is perhaps the longest running and most successful of the environmental and natural resources working groups. The working group was convened in November 2003 in response to S.L. 2003-352, Section 12.(a), which authorized the Commission to study issues related to the Leaking Petroleum Underground Storage Tank Cleanup Program. The legislation authorized the Commission to evaluate any of the following issues:

- (1) The adequacy of program funding.
- (2) Options for management of available funds, including prioritization of cleanups and preapproval of cleanups.
- (3) Changes in deductible and co payment requirements.
- (4) Options to increase program funding.
- (5) The availability and use of private insurance to pay or reimburse the costs of the assessment and cleanup of releases and discharges of petroleum from petroleum underground storage tanks and of any liability of owners and operators of those tanks to third parties.

- (6) Issues related to the inclusion of aboveground storage tanks in the program, including registration, fees and other funding issues, cleanup standards, and regulation of these tanks.
- (7) Issues related to the provision of liability protection to a bona fide purchaser of a petroleum contaminated property who has knowledge of, but did not cause or contribute to, the contamination of the property.

Meetings of the working group were held on 17 November 2003, 15 December 2003, 19 March 2004, 31 March 2004, 19 April 2004, and 4 May 2004. The working group focused primarily on two issues: 1) the solvency of the Trust Funds and problems associated with delays in reimbursement from the funds; and 2) the provision of liability protection to a bona fide purchaser of a petroleum contaminated party who has knowledge of, but did not cause or contribute to, the contamination of the property. The working group has not reached a resolution on either of these issues as of this report, but will likely continue to meet during the 2004 Regular Session to discuss these issues in the context of the legislative proposals mentioned below.

Proposed legislation to address Trust Fund liquidity appears in the recommendations section of this report as “Leaking UST Fund Liquidity.” A legislative proposal entitled "Limit Liability for Environmental Cleanups" that appears in the recommendations section of this report includes provisions designed to provide liability protection to a bona fide purchaser of a petroleum contaminated party who has knowledge of, but did not cause or contribute to, the contamination of the property.

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APPENDIX I:

Legislative Proposals

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1 State Park, Chowan Swamp State Natural Area, Dismal Swamp State
2 Natural Area, Elk Knob State Natural Area, Fort Fisher State
3 Recreation Area, Fort Macon State Park, Goose Creek State Park,
4 Gorges State Park, Hammocks Beach State Park, ~~Hemlock Bluffs~~
5 ~~State Natural Area~~, Jones Lake State Park, Lake James State Park,
6 Lake Norman State Park, Lake Waccamaw State Park, Lea Island
7 State Natural Area, Lumber River State Park, Medoc Mountain State
8 Park, Merchants Millpond State Park, Mitchells Millpond State
9 Natural Area, Mount Mitchell State Park, Occoneechee Mountain
10 State Natural Area, Pettigrew State Park, Pilot Mountain State Park,
11 Raven Rock State Park, Run Hill State Natural Area, Singletary Lake
12 State Park, Theodore Roosevelt State Natural Area, and Weymouth
13 Woods-Sandhills Nature Preserve.

14 ...

15 (18) All land and waters within the boundaries of Hemlock Bluffs State
16 Natural Area as of May 6, 2003 with the exception of the following
17 tracts: The portion of that certain tract or parcel of land at Hemlock
18 Bluffs State Natural Area in Wake County, Swift Creek Township,
19 described in Deed Book 2461, Page 037, containing 2,025 square feet
20 and being the portion of this tract shown as proposed R/W on the
21 drawing prepared by Titan Atlantic Group entitled "Right of Way
22 Acquisition Map for Town of Cary Widening of Kildaire Farm Road
23 (SR 1300) from Autumgate Drive to Palace Green" sheet 1 of 3
24 bearing the preparer's file name Town of Cary Case File No. TOC 01-
25 37, dated 26 September 2003, and filed with the State Property Office;
26 and the portion of those certain tracts or parcels of land at Hemlock
27 Bluffs State Natural Area in Wake County, Swift Creek Township,
28 described in Deed Book 4670, Page 420, containing 24,092 square feet
29 and being the portion of these tracts shown as proposed R/W on the
30 drawing prepared by Titan Atlantic Group entitled "Right of Way
31 Acquisition Map for Town of Cary Widening of Kildaire Farm Road
32 (SR 1300) from Autumgate Drive to Palace Green" sheet 3 of 3
33 bearing the preparer's file name Town of Cary Case File No. TOC 01-
34 37, dated 26 September 2003, and filed with the State Property Office.
35 The tracts excluded from the State Nature and Historic Preserve under
36 this subdivision are deleted from the State Parks System pursuant to
37 G.S. 113-44.14. The State of North Carolina may only exchange this
38 land for other land for the expansion of Hemlock Bluffs State Natural
39 Area or sell this land and use the proceeds for that purpose. The State
40 may not otherwise sell or exchange this land."

41 **SECTION 2.** The following tracts of land are removed from the State Nature
42 and Historic Preserve pursuant to Section 5 of Article XIV of the Constitution of North
43 Carolina: The portion of that certain tract or parcel of land at Hemlock Bluffs State
44 Natural Area in Wake County, Swift Creek Township, described in Deed Book 2461,

1 Page 037, containing 2,025 square feet and being the portion of this tract shown as
2 proposed R/W on the drawing prepared by Titan Atlantic Group entitled "Right of Way
3 Acquisition Map for Town of Cary Widening of Kildiare Farm Road (SR 1300) from
4 Autumgate Drive to Palace Green" sheet 1 of 3 bearing the preparer's file name Town of
5 Cary Case File No. TOC 01-37, dated 26 September 2003, and filed with the State
6 Property Office; and the portion of those certain tracts or parcels of land at Hemlock
7 Bluffs State Natural Area in Wake County, Swift Creek Township, described in Deed
8 Book 4670, Page 420, containing 24,092 square feet and being the portion of these
9 tracts shown as proposed R/W on the drawing prepared by Titan Atlantic Group entitled
10 "Right of Way Acquisition Map for Town of Cary Widening of Kildiare Farm Road
11 (SR 1300) from Autumgate Drive to Palace Green" sheet 3 of 3 bearing the preparer's
12 file name Town of Cary Case File No. TOC 01-37, dated 26 September 2003, and filed
13 with the State Property Office.

14 **SECTION 3.** The following tract is removed from the State Parks System
15 pursuant to G.S. 113-44.14: The portion of that certain tract or parcel of land at Pilot
16 Mountain State Park in Surry County, Shoals Township, described in Plat Book 21,
17 Page 76, containing 104.280 acres, and shown as the "Horne Creek Living Historical
18 Park" on the drawing prepared by Joe L. Cooke, bearing the preparer's file name Dwg.
19 3/330, dated 23 March 2004, and filed with the State Property Office. This property
20 may be reallocated to the Department of Cultural Resources for its use of the property
21 as the Horne Creek Farm State Historic Site. This property will remain in the State
22 Nature and Historic Preserve.

23 **SECTION 4.** In accordance with G.S. 143-260.8(e), the Secretary of State is
24 directed to forward a certified copy of this act to the register of deeds of each county in
25 which any portion of the property removed by this act as part of the State Nature and
26 Historic Preserve is located.

27 **SECTION 5.** This act is effective when it becomes law.

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BILL DRAFT 2003-RIz-11 [v.5] (5/7)

Tax Credit for Certain Real Prop. Donations

A BILL TO BE ENTITLED

AN ACT TO RECODIFY THE CREDIT FOR CERTAIN REAL PROPERTY DONATIONS AND TO INCREASE THE CREDIT FOR CERTAIN PASS-THROUGH ENTITIES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 4 of Chapter 105 of the General Statutes is amended by adding a new Part to read:

" Part 6. Tax Credit for Certain Real Property Donations.

"§ 105-163.021. Tax credit allowed.

(a) Qualified donation. – A person who makes a qualified donation of an interest in real property located in North Carolina during the taxable year that is useful for (i) public beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife conservation, or (iv) other similar land conservation purposes is allowed a credit against the tax imposed by Article 4 of this Chapter equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in property must be donated in perpetuity to and accepted by the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions under the Code. Lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under a regulation or ordinance are not eligible for this credit. To support the credit allowed by this section, the taxpayer must file with the income tax return for the taxable year in which the credit is claimed a certification by the Department of Environment and Natural Resources that the property donated is suitable for one or more of the valid public benefits set forth in this subsection. The certification for a qualified donation made by a pass-through entity must be filed by the pass-through entity.

1 **(b) Corporations.** – The aggregate amount of credit allowed to a corporation in a
2 taxable year under this section for one or more qualified donations, whether made
3 directly or indirectly as owner of a pass-through entity, may not exceed five hundred
4 thousand dollars (\$500,000). That portion of a qualifying donation that is the basis for a
5 credit allowed under this section is not eligible for deduction as a charitable contribution
6 under G.S. 105-130.9.

7 **(b1) Individuals.** – The aggregate amount of credit allowed to an individual in a
8 taxable year under this section for one or more qualified donations, whether made
9 directly or indirectly as owner of a pass-through entity, may not exceed two hundred
10 fifty thousand dollars (\$250,000). In the case of property owned by a married couple, if
11 both spouses are required to file North Carolina income tax returns, the credit allowed
12 by this section may be claimed only if the spouses file a joint return. If only one spouse
13 is required to file a North Carolina income tax return, that spouse may claim the credit
14 allowed by this section on a separate return.

15 **(b2) Pass-through entities.** – The aggregate amount of credit allowed to a pass-
16 through entity in a taxable year under this section for one or more qualified donations,
17 whether made directly or indirectly as owner of another pass-through entity, may not
18 exceed five hundred thousand dollars (\$500,000). Each individual who is an owner of a
19 pass-through entity is allowed as a credit an amount equal to the owner's allocated share
20 of the credit to which the pass-through entity is eligible under this subsection, not to
21 exceed \$250,000. Each corporation that is an owner of a pass-through entity is allowed
22 as a credit an amount equal to the owner's allocated share of the credit to which the
23 pass-through entity is eligible under this subsection, not to exceed \$500,000.

24 **(c) Cap; carryforward.** – The credit allowed by this section may not exceed the
25 amount of tax imposed by Article 4 of this Chapter for the taxable year reduced by the
26 sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer.
27 Any unused portion of this credit may be carried forward for the next succeeding five
28 years.

29 **(d) Marshland.** – In the case of marshland for which a claim has been filed
30 pursuant to G.S. 113-205, the offer of donation must be made before December 31,
31 2003 to qualify for the credit allowed by this section."

32 **SECTION 2.** G.S. 105-130.34 is repealed.

33 **SECTION 3.** G.S. 105-151.12 is repealed.

34 **SECTION 4.** This act is effective for taxable years beginning on or after
35 January 1, 2005.

BILL DRAFT 2003-SBz-31 [v.8] (4/28)

Phase II Stormwater Management-1

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE IMPLEMENTATION OF FEDERAL PHASE II
STORMWATER MANAGEMENT REQUIREMENTS, AS RECOMMENDED BY
THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Phase II Stormwater Permit Application and Standards. – An application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management submitted by a local government designated as an urbanized area under the 1990 or 2000 census by the Bureau of the Census shall be deemed timely received if the application was submitted to the Department of Environment and Natural Resources in accordance with the application schedule set out in Section 6 of the temporary rule adopted by the Environmental Management Commission on 10 October 2002. To obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management under this Section, an applicant shall develop, implement, and enforce a stormwater management plan approved by the Department that satisfies the six minimum control measures required by 40 Code of Federal Regulations § 122.34(b) (1 July 2003 Edition). The evaluation of the post-construction stormwater management measures required by 40 Code of Federal Regulations § 122.34(b)(5) (1 July 2003 Edition) shall be conducted as provided in Section 10 of the temporary rule adopted by the Environmental Management Commission on 10 October 2002. A municipality with a population of less than 1,000, including a municipality designated by the 1990 or 2000 census, is not required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management unless the municipality is shown to be contributing to an impairment of State waters, as determined under the requirements of § 33 U.S.C. 1313(d).

1 **SECTION 2.** New Development. – New development or redevelopment in
2 any area designated as an urbanized area under the 1990 or 2000 census by the Bureau
3 of the Census or under procedures established in Section 7 of this act, and located in a
4 local jurisdiction that does not administer either a Phase II National Pollutant Discharge
5 Elimination System (NPDES) permit for stormwater management or a local stormwater
6 management program approved pursuant to Section 5 of this act shall comply with the
7 standards set out in Section 10 of the temporary rule adopted by the Environmental
8 Management Commission on 10 October 2002. The Department of Environment and
9 Natural Resources shall administer and enforce these standards in these areas.

10 **SECTION 3.** Coordination of Phase II and other Stormwater Management
11 Programs. – In any circumstance where any stormwater control requirement under a
12 Phase II National Pollutant Discharge Elimination System (NPDES) stormwater
13 management permit conflicts or overlaps with any stormwater control requirement
14 under any other water quality program, the more stringent requirement shall apply. The
15 Secretary of Environment and Natural Resources or the Secretary's designee shall
16 resolve any dispute as to whether there is a conflict or overlap between or among
17 stormwater management requirements and shall determine which requirement shall be
18 deemed the most stringent.

19 **SECTION 4.** General Permit. – After the Department of Environment and
20 Natural Resources has issued a Phase II National Pollutant Discharge Elimination
21 System (NPDES) general permit for stormwater management, a local government that
22 has applied for a permit under Section 1 of this act may submit a notice of intent to be
23 covered under the general permit to the Department. The Department shall treat an
24 application for a permit under Section 1 of this act as an application for an individual
25 permit unless the applicant submits a notice of intent to be covered under a general
26 permit under this Section.

27 **SECTION 5.** Voluntary Delegation to Local Governments. – A local
28 government whose jurisdiction includes an area designated as an urbanized area under
29 the 1990 or 2000 census by the Bureau of the Census or a local government designated
30 pursuant to Section 7 of this act may submit to the Department of Environment and
31 Natural Resources for its approval a stormwater management program for its
32 jurisdiction, and to this end local governments are authorized to adopt ordinances and
33 regulations necessary to establish and enforce stormwater management programs. Local
34 governments are authorized to create or designate agencies or subdivisions of local
35 government to administer and enforce the programs. An ordinance adopted by a local
36 government shall at least meet and may exceed the minimum requirements of this act
37 and the six minimum control measures required by 40 Code of Federal Regulations §
38 122.34(b) (1 July 2003 Edition). Two or more units of local government are authorized
39 to establish a joint program and to enter into any agreements that are necessary for the
40 proper administration and enforcement of the program. The resolutions establishing any
41 joint program must be duly recorded in the minutes of the governing body of each unit
42 of local government participating in the program, and a certified copy of each resolution
43 must be filed with the Department. The Department shall review each program
44 submitted and within 90 days of receipt thereof shall notify the local government

1 submitting the program that it has been approved, approved with modifications, or
2 disapproved. The Department shall only approve a program upon determining that its
3 standards equal or exceed those of this act and the six minimum control measures
4 required by 40 Code of Federal Regulations § 122.34(b) (1 July 2003 Edition). If the
5 Department determines that any local government is failing to administer or enforce an
6 approved stormwater management program, it shall notify the local government in
7 writing and shall specify the deficiencies of administration and enforcement. If the local
8 government has not taken corrective action within 30 days of receipt of notification
9 from the Department, the Department shall assume administration and enforcement of
10 the program until such time as the local government indicates its willingness and ability
11 to resume administration and enforcement of the program.

12 **SECTION 6.** Phase II Stormwater Implementation Deadlines. –

- 13 (1) For a permit application submitted by a local government that was
14 designated as an urbanized area under the 1990 census by the Bureau
15 of the Census, the Department of Environment and Natural Resources
16 shall send a draft permit decision to public notice by 1 November
17 2004.
- 18 (2) For a permit application submitted by a local government that was
19 designated as an urbanized area under the 2000 census by the Bureau
20 of the Census, the Department of Environment and Natural Resources
21 shall send a draft permit decision to public notice by 1 May 2005.
- 22 (3) A local government shall adopt post-construction stormwater
23 management measures that become effective within 24 months after
24 the date on which a permit is issued.

25 **SECTION 7.** Designation Process – The provisions of proposed 15A NCAC
26 2H .0151 (Public Entity Designations) as adopted by the Environmental Management
27 Commission on 11 December 2003 shall govern the designation of local governments
28 not designated as urbanized areas under the 1990 or 2000 census by the Bureau of the
29 Census that must obtain a Phase II National Pollutant Discharge Elimination System
30 (NPDES) permit for stormwater management.

31 **SECTION 8.** Petition Process – The provisions of proposed 15A NCAC 2H
32 .0152 (Petitions) as adopted by the Environmental Management Commission on 11
33 December 2003 shall govern the process by which a petition may be submitted to the
34 Department of Environment and Natural Resources to require a local government to
35 obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for
36 stormwater management.

37 **SECTION 9.** Design Manual; Model Ordinance. – Consistent with G.S.
38 150B-2(8a)h., the Division of Water Quality, in consultation with the Division of Land
39 Resources, Division of Soil and Water Conservation, and North Carolina State
40 University, shall develop a design manual to assist local governments in determining
41 which controls are best suited to the unique characteristics of the jurisdiction. Pursuant
42 to G.S. 143-214.7(c), the Environmental Management Commission shall develop a
43 model ordinance in cooperation with local governments that shall include both

1 structural and nonstructural best management practices adequate to meet the standards.
2 The design manual and model ordinance shall be completed by 1 October 2005.

3 **SECTION 10.** Construction of Act. –

4 (1) Nothing in this act shall be construed to limit the authority of the
5 Environmental Management Commission or any unit of local
6 government to adopt stormwater management requirements that
7 exceed the requirements of this act.

8 (2) This act shall not be construed to affect pending litigation.

9 **SECTION 11.** Section 2 of this act becomes effective 1 July 2006. All other
10 sections of this act become effective when the act becomes law.

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- (1) For a permit application submitted by a local government that was designated as an urbanized area under the 1990 census by the Bureau of the Census, the Department of Environment and Natural Resources shall send a draft permit decision to public notice by 1 November 2004.
- (2) For a permit application submitted by a local government that was designated as an urbanized area under the 2000 census by the Bureau of the Census, the Department of Environment and Natural Resources shall send a draft permit decision to public notice by 1 May 2005.
- (3) A local government shall adopt post-construction stormwater management measures that become effective within 24 months after the date on which a permit is issued.

SECTION 3. This act is effective when it becomes law.

BILL DRAFT 2003-SYz-22 [v.5] (5/4)

Drycleaning Solvent Cleanup Act Amendments

1 A BILL TO BE ENTITLED

2 AN ACT TO INCREASE THE PERCENTAGE OF REVENUE CREDITED TO THE
3 DRY-CLEANING SOLVENT CLEANUP FUND THAT MAY BE USED TO PAY
4 COSTS OF ASSESSMENT OR REMEDIATION OF DRY-CLEANING
5 SOLVENT CONTAMINATION THAT OCCURRED PRIOR TO 1 JULY 2001,
6 AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** Section 2.(c) of S.L. 2001-265 reads as rewritten:

9 "SECTION 2.(c) The total of all payments made pursuant to this section in a single
10 fiscal year shall not exceed ~~ten percent (10%)~~twenty-five percent (25%) of the revenues
11 credited to the Dry-Cleaning Solvent Cleanup Fund in the preceding fiscal year."

12 **SECTION 2.** This act becomes effective 1 July 2004.

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SENATE DRS15245-SYz-23 (5/6)

Phosphorous Nutrient Mgt./Animal Feedlots

1 A BILL TO BE ENTITLED

2 AN ACT TO IMPLEMENT REQUIREMENTS APPLICABLE TO NATIONAL
3 POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS AND
4 ANIMAL WASTE MANAGEMENT PLANS GOVERNING ANIMAL FEEDING
5 OPERATIONS TO MAKE THE STATE PERMIT REQUIREMENTS
6 CONSISTENT WITH FEDERAL REQUIREMENTS, AS RECOMMENDED BY
7 THE ENVIRONMENTAL REVIEW COMMISSION.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. G.S. 143-215.10B reads as rewritten:

10 "§ 143-215.10B. Definitions.

11 As used in this Part:

- 12 (1) "Animal operation" means any agricultural ~~farming-feedlot~~ activity
13 involving 250 or more swine, 100 or more confined cattle, 75 or more
14 horses, 1,000 or more sheep, or 30,000 or more confined poultry with
15 a liquid animal waste management ~~system-system, or any smaller~~
16 agricultural feedlot activity with a liquid animal waste management
17 system that discharges to the surface waters of the State. A public
18 livestock market regulated under Article 35 of Chapter 106 of the
19 General Statutes is an animal operation for purposes of this Part.
- 20 (2) "Animal waste" means livestock or poultry excreta or a mixture of
21 excreta with feed, bedding, litter, or other materials from an animal
22 operation.
- 23 (3) "Animal waste management system" means a combination of
24 structures and nonstructural practices serving a feedlot that provide for
25 the collection, treatment, storage, or land application of animal waste.
- 26 (4) "Division" means the Division of Water Quality of the Department.

1 (4a) "Dry litter poultry facility" means any agricultural feedlot activity
2 involving poultry that does not utilize a liquid animal waste
3 management system.

4 (5) "Feedlot" means a lot or building or combination of lots and buildings
5 intended for the confined feeding, breeding, raising, or holding of
6 animals and either specifically designed as a confinement area in
7 which animal waste may accumulate or where the concentration of
8 animals is such that an established vegetative cover cannot be
9 maintained. A building or lot is not a feedlot unless animals are
10 confined for 45 or more days, which may or may not be consecutive,
11 in a 12-month period. Pastures shall not be considered feedlots for
12 purposes of this Part.

13 (6) "Technical specialist" means an individual designated by the Soil and
14 Water Conservation Commission, pursuant to rules adopted by that
15 Commission, to certify animal waste management plans."

16 **SECTION 2.** G.S. 143-215.10C reads as rewritten:

17 **"§ 143-215.10C. Applications and permits.**

18 (a) No person shall construct or operate an animal waste management system for
19 an animal operation or a dry litter poultry facility subject to federal discharge permit
20 regulations without first obtaining an individual permit or a general permit under this
21 Article-section. The Commission shall develop a system of individual and general
22 permits for animal operations and dry litter poultry facilities based on species, number
23 of animals, and other relevant factors. It is the intent of the General Assembly that most
24 animal waste management systems be permitted under a general permit. The
25 Commission, in its discretion, may require that an animal waste management system be
26 permitted under an individual permit if the Commission determines that an individual
27 permit is necessary to protect water quality, public health, or the environment.

28 (b) An animal waste management system shall be designed, constructed, and
29 operated so that the animal operation served by the animal waste management system
30 does not cause pollution in the waters of the State except as may result because of
31 rainfall from a storm event more severe than the 25-year, 24-hour ~~storm~~ storm of the
32 100-year, 24-hour storm if required by federal discharge permit regulations.

33 (c) The Commission shall act on a permit application as quickly as possible and
34 may conduct any inquiry or investigation it considers necessary before acting on an
35 application.

36 (d) All applications for permits or for renewal of an existing permit shall be in
37 writing, and the Commission may prescribe the form of the applications. All
38 applications shall include an animal waste management system plan approved by a
39 technical specialist. The Commission may require an applicant to submit additional
40 information the Commission considers necessary to evaluate the application. Permits
41 and renewals issued pursuant to this section shall be effective until the date specified
42 therein or until rescinded unless modified or revoked by the Commission.

43 (e) Animal waste management plans for animal operations shall include all of the
44 following components:

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- (1) A checklist of potential odor sources and a choice of site-specific, cost-effective remedial best management practices to minimize those sources.
- (2) A checklist of potential insect sources and a choice of site-specific, cost-effective best management practices to minimize insect problems.
- (3) Provisions that set forth acceptable methods of disposing of mortalities.
- (4) Provisions regarding best management practices for riparian buffers or equivalent controls, particularly along perennial streams.
- (5) Provisions regarding the use of emergency spillways and site-specific emergency management plans that set forth operating procedures to follow during emergencies in order to minimize the risk of environmental damage.
- (6) Provisions regarding periodic testing of waste products used as nutrient sources as close to the time of application as practical and at least within 60 days of the date of application and periodic testing, at least annually, of soils at crop sites where the waste products are applied. Nitrogen shall be the rate-determining ~~element~~element, except that phosphorous provisions of the most current nutrient management standard approved by the Soil and Water Conservation Commission or the Natural Resources Conservation Service of the United States Department of Agriculture may also be a rate-determining factor for facilities subject to federal discharge permit regulations. Zinc and copper levels in the soils shall be monitored, and alternative crop sites shall be used when these metals approach excess levels.
- (7) Provisions regarding waste utilization plans that assure a balance between nitrogen application rates and nitrogen crop requirements, that assure that lime is applied to maintain pH in the optimum range for crop production, and that include corrective action, including revisions to the waste utilization plan based on data of crop yields and crops analysis, that will be taken if this balance is not achieved as determined by testing conducted pursuant to subdivision (6) of this subsection.
- (8) Provisions regarding the completion and maintenance of records on forms developed by the Department, which records shall include information addressed in subdivisions (6) and (7) of this subsection, including the dates and rates that waste products are applied to soils at crop sites, and shall be made available upon request by the Department.

(f) ~~Any operator of an animal operation with a dry litter animal waste management system~~Animal waste management plans for dry litter poultry facilities not subject to federal discharge permit requirements, but involving 30,000 or more birds shall develop an animal waste management plan that complies with the testing and

1 record-keeping requirements under subdivisions (6) through (8) of subsection (e) of this
2 section. Any operator of this type of animal waste management system shall retain
3 records required under this section and by the Department on-site for three years.

4 (f1) Animal waste management plans for dry litter poultry facilities subject to
5 federal discharge permit regulations shall include the components listed in subsection
6 (e) of this section.

7 (g) The Commission shall encourage the development of alternative and
8 innovative animal waste management technologies. The Commission shall provide
9 sufficient flexibility in the regulatory process to allow for the timely evaluation of
10 alternative and innovative animal waste management technologies and shall encourage
11 operators of animal waste management systems to participate in the evaluation of these
12 technologies. The Commission shall provide sufficient flexibility in the regulatory
13 process to allow for the prompt implementation of alternative and innovative animal
14 waste management technologies that are demonstrated to provide improved protection
15 to public health and the environment.

16 (h) The owner or operator of an animal waste management system shall:

17 (1) In the event of a discharge of 1,000 gallons or more of animal waste to
18 the surface waters of the State, issue a press release to all print and
19 electronic news media that provide general coverage in the county
20 where the discharge occurred setting out the details of the discharge.
21 The owner or operator shall issue the press release within 48 hours
22 after the owner or operator has determined that the discharge has
23 reached the surface waters of the State. The owner or operator shall
24 retain a copy of the press release and a list of the news media to which
25 it was distributed for at least one year after the discharge and shall
26 provide a copy of the press release and the list of the news media to
27 which it was distributed to any person upon request.

28 (2) In the event of a discharge of 15,000 gallons or more of animal waste
29 to the surface waters of the State, publish a notice of the discharge in a
30 newspaper having general circulation in the county in which the
31 discharge occurs and in each county downstream from the point of
32 discharge that is significantly affected by the discharge. The Secretary
33 shall determine, at the Secretary's sole discretion, which counties are
34 significantly affected by the discharge and shall approve the form and
35 content of the notice and the newspapers in which the notice is to be
36 published. The notice shall be captioned "NOTICE OF DISCHARGE
37 OF ANIMAL WASTE". The owner or operator shall publish the
38 notice within 10 days after the Secretary has determined the counties
39 that are significantly affected by the discharge and approved the form
40 and content of the notice and the newspapers in which the notice is to
41 be published. The owner or operator shall file a copy of the notice and
42 proof of publication with the Department within 30 days after the
43 notice is published. Publication of a notice of discharge under this

1 subdivision is in addition to the requirement to issue a press release
2 under subdivision (1) of this subsection.

3 (i) A person who obtains an individual permit under G.S. 143-215.1 for an
4 animal waste management system that serves a public livestock market shall not be
5 required to obtain a permit under this Part and is not subject to the requirements of this
6 Part.

7 (j) New and expanding animal operations or dry litter poultry facilities subject to
8 federal discharge permit regulations must apply for and receive coverage under a
9 discharge permit and comply with the phosphorous provisions of the most current
10 nutrient management standard before receiving a permit or stocking animals.

11 (k) Existing animal operations subject to federal discharge permit regulation shall
12 comply with the phosphorous provisions of the most current nutrient management
13 standard on or before 1 July 2007.

14 (l) Existing dry litter poultry facilities subject to federal discharge permit
15 regulations or that have been notified by the Department that they are subject to federal
16 discharge permit regulation because of an unpermitted discharge must apply for and
17 receive coverage under a discharge permit by 13 April 2008."

18 **SECTION 3.** G.S. 143-215.10G(a) reads as rewritten:

19 "(a) The Department shall charge an annual permit fee of all animal operations
20 and dry litter poultry facilities that are subject to a permit under G.S. 143-215.10C for
21 animal waste management systems according to the following schedule:

- 22 (1) For a system with a design capacity of 38,500 or more and less than
23 100,000 pounds steady state live weight, fifty dollars (\$50.00).
- 24 (2) For a system with a design capacity of 100,000 or more and less than
25 800,000 pounds steady state live weight, one hundred fifty dollars
26 (\$150.00).
- 27 (3) For a system with a design capacity of 800,000 pounds or more steady
28 state live weight, three hundred dollars (\$300.00)."

29 **SECTION 4.** The Department of Environment and Natural Resources shall
30 evaluate the application of phosphorous provisions of the most current nutrient
31 management standard approved by the Soil and Water Conservation Commission or the
32 Natural Resources Conservation Service of the United States Department of Agriculture
33 to permitted animal operations and dry litter poultry facilities as provided in subsections
34 (j), (k), and (l) of G.S. 143-215.10C. In the course of the study required by this section,
35 the Department shall also consider the application of the phosphorous provisions of the
36 nutrient management standard to existing animal operations and dry litter poultry
37 facilities not subject to the permit requirements of subsections (j), (k), and (l) of G.S.
38 143-215.10C. The Department shall give emphasis to the proper role for nonregulatory
39 programs and the development of innovative partnerships with producers and business
40 interests in the livestock and poultry industry in its recommendations for these small-
41 and medium-sized animal facilities. If the Department recommends that a regulatory
42 process be implemented, the Department shall propose an implementation schedule for
43 compliance with the phosphorous provisions of the nutrient management standard. The

- 1 Department shall report its findings and recommendations to the Environmental Review
- 2 Commission on or before 1 April 2008.
- 3 **SECTION 5.** This act becomes effective 1 January 2005.

BILL DRAFT 2003-RTfz-30 [v.4] (5/9)

Limit Liability for Environmental Cleanups

1 A BILL TO BE ENTITLED

2 AN ACT TO PROMOTE ECONOMIC DEVELOPMENT BY FACILITATING THE
3 REUSE OF CONTAMINATED REAL PROPERTY BY LIMITING THE
4 LIABILITY OF PURCHASERS OF CONTAMINATED PROPERTY IN
5 CIRCUMSTANCES WHERE THE SELLER OF THE PROPERTY OR ANOTHER
6 PARTY ASSUMES RESPONSIBILITY FOR RESPONSE, REMEDIATION, AND
7 NATURAL RESOURCES RESTORATION OF THE PROPERTY, AS
8 RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

9 The General Assembly of North Carolina enacts:

10 **SECTION 1.** G.S. 130A-310 is amended by adding a new subdivision to
11 read:

12 "(1a) 'Contiguous property owner' means a person who owns real property
13 that touches along a boundary or at a point real property that is
14 contaminated by a release of a hazardous substance.'"

15 **SECTION 2.** G.S. 143-215.77 is amended by adding a new subdivision to
16 read:

17 "(2a) 'Contiguous property owner' means a person who owns real property
18 that touches along a boundary or at a point real property that is
19 contaminated by a release of a hazardous substance.'"

20 **SECTION 3.** G.S. 130A-310.3 is amended by adding a new subsection to
21 read:

22 "(b1) A responsible party who satisfies the Secretary that the responsible party has
23 completed a remedial action for hazardous substances at an inactive hazardous
24 substance or waste disposal site pursuant to this Part shall not be required to perform
25 any remedial action for the same release pursuant to Article 21 or Article 21A of
26 Chapter 143 of the General Statutes.'"

27 **SECTION 4.** G.S. 130A-310.7 reads as rewritten:

1 "§ 130A-310.7. Action for reimbursement; liability of responsible parties;
2 notification of completed remedial action.

3 (a) ~~Notwithstanding any other provision or rule of law, and subject~~Subject only to
4 the defenses set forth in this ~~subsection, any person who~~section, a responsible party is a
5 person who causes or contributes to the existence of an inactive hazardous substance or
6 waste disposal site by any of the following:

- 7 (1) ~~Discharges or deposits; or~~Discharging, releasing, or depositing any
8 hazardous substance.
- 9 (2) ~~Contracts or arranges for any discharge or deposit; or~~Contracting or
10 arranging for a discharge, release, or deposit of any hazardous
11 substance.
- 12 (3) ~~Accepts for discharge or deposit; or~~Accepting any hazardous
13 substance.
- 14 (4) ~~Transports or arranges for transport for the purpose of discharge or~~
15 depositTransporting or arranging for the transport of any hazardous
16 substance for the purpose of discharging, releasing, or depositing any
17 hazardous substance.
- 18 (5) Owning or operating a site that contains any hazardous substance.
- 19 (6) Owning or operating a site at the time of discharge, release, or deposit
20 of any hazardous substance.

21 ~~any hazardous substance, the result of which discharge or deposit is the existence of an~~
22 ~~inactive hazardous substance or waste disposal site, shall be considered a responsible~~
23 ~~party.~~

24 (a1) Neither an innocent landowner who is a bona fide purchaser of ~~the~~any real
25 property comprising an inactive hazardous substance or waste disposal site without
26 knowledge or without a reasonable basis for knowing that a hazardous substance or
27 waste ~~disposal~~discharge, release, deposit, or disposal had occurred nor a contiguous
28 property owner shall not be considered a responsible party if the landowner or
29 contiguous property owner establishes all of the following to the satisfaction of the
30 Secretary:

- 31 (1) All of the discharge, release, deposit, or disposal of hazardous
32 substances or waste at the site occurred before the owner acquired the
33 site; or the disposal was solely the result of:
 - 34 a. An act of God; or
 - 35 b. An act of war; or
 - 36 c. An intentional act or omission of a third party who is not an
37 employee or agent of the owner or who does not have a
38 contractual relationship with the owner.
- 39 (2) On or before the date of purchase, the owner made all appropriate
40 inquiries into the previous ownership and uses of the property in
41 accordance with generally accepted and customary commercial
42 standards and practices. The Secretary shall take into account any
43 specialized knowledge or experience on the part of the owner, the
44 relationship of the purchase price to the value of the property if the

1 property were not contaminated, commonly known or reasonably
2 ascertainable information about the property, and whether the
3 contamination is detectable by appropriate inspection. In the case of
4 property that is used for residential or similar purposes at the time of
5 its purchase by an entity that is neither governmental nor commercial,
6 a site inspection and title search that does not reveal information that
7 would cause a reasonable person to make further investigation shall
8 satisfy the requirements of this subdivision.

9 (3) The owner has provided all legally required notices with respect to the
10 discovery of a discharge, release, deposit, or disposal of any hazardous
11 substance or waste at the property.

12 (4) The owner has exercised appropriate care with respect to hazardous
13 substances found at the property by taking reasonable steps to do all of
14 the following:

15 a. Stopping any continuing discharge, release, deposit, or disposal.

16 b. Preventing any threatened future discharge, release, deposit, or
17 disposal.

18 c. Conducting remedial measures approved by the Secretary that
19 prevent or limit human, environmental, or natural resources
20 exposure to any hazardous substance or waste discharged,
21 released, deposited, or disposed of at the property and make the
22 property safe for its intended use. Measures may include the
23 application of institutional controls and other means of
24 preventing exposure

25 (5) The owner has provided and continues to provide full cooperation,
26 assistance, and access to persons who are authorized to conduct any
27 response, remedial action, or natural resources restoration at the
28 property, including any cooperation and access necessary to install,
29 operate, maintain, or secure any completed or partial response,
30 remedial action, or natural resources restoration at the property.

31 (6) The owner has complied and continues to comply with any land-use
32 restrictions established or relied on in connection with the response,
33 remedial action, or natural resources restoration at the property.

34 (7) The owner has not impeded and continues to not impede the
35 effectiveness or integrity of any institutional control employed at the
36 property in connection with a response, remedial action, or natural
37 resources restoration.

38 (8) The owner has complied or has agreed to comply with any requirement
39 to record any land-use restrictions that may be required by the
40 Secretary.

41 (9) The owner has complied and continues to comply with any request for
42 information or administrative subpoena issued by the Secretary.

43 (10) The owner is not liable, potentially liable, or affiliated with any other
44 person who is liable or potentially liable for any cost associated with

1 the response, remedial action, or natural resources restoration at the
2 property through any of the following:

3 a. Any direct or indirect familial relationship.

4 b. Any contractual, corporate, or financial relations, other than a
5 contractual, corporate, or financial relationship that is created
6 by an instrument through which title to the property is
7 conveyed, an instrument through which sale or purchase of the
8 property is financed, or by a contract for the sale of goods or
9 services.

10 c. A reorganization in bankruptcy of a business entity that is liable
11 or potentially liable.

12 (a2) A bona fide purchaser of any real property comprising an inactive hazardous
13 substance or waste disposal site with knowledge or with a reasonable basis for knowing
14 that a hazardous substance or waste discharge, release, deposit, or disposal had occurred
15 shall not be considered a responsible party if the purchaser establishes all of the
16 following to the satisfaction of the Secretary:

17 (1) All of the discharge, release, deposit, or disposal of hazardous
18 substances or waste at the site occurred before the purchaser acquired
19 the site; or the disposal was solely the result of:

20 a. An act of God; or

21 b. An act of war; or

22 c. An intentional act or omission of a third party who is not an
23 employee or agent of the purchaser or who does not have a
24 contractual relationship with the purchaser.

25 (2) On or before the date of purchase, the purchaser made all appropriate
26 inquiries into the previous ownership and uses of the property in
27 accordance with generally accepted and customary commercial
28 standards and practices. The Secretary shall take into account any
29 specialized knowledge or experience on the part of the purchaser, the
30 relationship of the purchase price to the value of the property if the
31 property were not contaminated, commonly known or reasonably
32 ascertainable information about the property, and whether the
33 contamination is detectable by appropriate inspection. In the case of
34 property that is used for residential or similar purposes at the time of
35 its purchase by an entity that is neither governmental nor commercial,
36 a site inspection and title search that does not reveal information that
37 would cause a reasonable person to make further investigation shall
38 satisfy the requirements of this subdivision.

39 (3) The purchaser has provided all legally required notices with respect to
40 the discovery of a discharge, release, deposit, or disposal of any
41 hazardous substance or waste at the property.

42 (4) The purchaser has exercised appropriate care with respect to hazardous
43 substances found at the property by taking reasonable steps to do all of
44 the following:

- a. Stopping any continuing discharge, release, deposit, or disposal.
- b. Preventing any threatened future discharge, release, deposit, or disposal.
- c. Conducting remedial measures approved by the Secretary that prevent or limit human, environmental, or natural resources exposure to any hazardous substance or waste discharged, released, deposited, or disposed of at the property and make the property safe for its intended use. Measures may include the application of institutional controls and other means of preventing exposure. Measures need not include soil or groundwater remediation by the purchaser other than those measures necessary to make the property safe for its intended use.

(5) The purchaser has demonstrated that the seller or another responsible party has provided financial assurance equivalent to the full cost of implementation of the response, remedial action, or natural resources restoration at the property to unrestricted use standards, as defined in G.S. 130A-310.31. Financial assurance mechanisms may include, under terms and conditions approved by the Secretary, letters of credit, insurance, surety bonds, and trust funds.

(6) The purchaser has provided and continues to provide full cooperation, assistance, and access to persons who are authorized to conduct any response, remedial action, or natural resources restoration at the property, including any cooperation and access necessary to install, operate, maintain, or secure any completed or partial response, remedial action, or natural resources restoration at the property. To the extent practical, response, remedial action, and natural resources restoration activities will be undertaken so as not to interference with use of the property and structures on the property. The purchaser shall not erect any new structure that would interfere with any required response, remedial action, or natural resources restoration activity until the activity has been completed.

(7) The purchaser has complied and continues to comply with any land-use restrictions established or relied on in connection with the response, remedial action, or natural resources restoration at the property.

(8) The purchaser has not impeded and continues to not impede the effectiveness or integrity of any institutional control employed at the property in connection with a response, remedial action, or natural resources restoration.

(9) The purchaser has complied or has agreed to comply with any requirement to record any land-use restrictions that may be required by the Secretary.

1 (10) The purchaser has complied and continues to comply with any request
2 for information or administrative subpoena issued by the Secretary.

3 (11) The purchaser is not liable, potentially liable, or affiliated with any
4 other person who is liable or potentially liable for any cost associated
5 with the response, remedial action, or natural resources restoration at
6 the property through any of the following:

7 a. Any direct or indirect familial relationship.

8 b. Any contractual, corporate, or financial relations, other than a
9 contractual, corporate, or financial relationship that is created
10 by an instrument through which title to the property is
11 conveyed, an instrument through which sale or purchase of the
12 property is financed, or by a contract for the sale of goods or
13 services.

14 c. A reorganization in bankruptcy of a business entity that is liable
15 or potentially liable.

16 (a3) A purchaser of any real property comprising an inactive hazardous substance or
17 waste disposal site may submit a written request to the Secretary for a determination
18 that the purchaser has met all the conditions set out in subsection (a2) of this section. A
19 determination may be made subject to the purchaser meeting all the conditions in
20 subsection (a2) of this section on or after closing that cannot reasonably be met prior to
21 closing. A request for a determination that a purchaser has met all the conditions set out
22 in subsection (a2) of this section must be accompanied by a fee of one thousand dollars
23 (\$1,000.00) to defray administrative costs of making the determination. The Secretary
24 shall develop and implement procedures to provide expeditious review of requests for
25 determinations so as to expedite real estate transactions involving contaminated
26 properties.

27 (a4) A person whose interest or ownership in ~~the real property comprising an~~
28 inactive hazardous substance or waste disposal site is solely based on or derived from a
29 security interest in the property shall not be considered a responsible party unless the
30 person at any time manages, operates, or participates in the management or operation of,
31 any facility located on the real property. A responsible party shall be directly liable to
32 the State for any or all of the reasonably necessary expenses of developing and
33 implementing a remedial action program for ~~such site, the property.~~ The Secretary shall
34 bring an action for reimbursement of the Inactive Hazardous Sites Cleanup Fund in the
35 name of the State in the superior court of Wake County, the county in which the site is
36 ~~located~~ located, or in an appropriate federal court to recover such sum and the cost of
37 bringing the action. The State must show that a danger to the public health or the
38 environment existed and that the State complied with the provisions of this Part.

39 (b) ~~There shall be no liability under this section for a person who can establish by a~~
40 ~~preponderance of the evidence that the danger to the public health or the environment~~
41 ~~caused by the site was caused solely by:~~

42 (1) ~~An act of God; or~~

43 (2) ~~An act of war; or~~

- 1 ~~(3) An intentional act or omission of a third party (but this defense shall~~
2 ~~not be available if the act or omission is that of an employee or agent~~
3 ~~of the defendant, or if the act or omission occurs in connection with a~~
4 ~~contractual relationship with the defendant); or~~
5 ~~(4) Any combination of the above causes.~~

6 The State shall have a lien on any property with respect to which the State has
7 unrecovered costs for a response, remedial action, or natural resources restoration. The
8 amount of the lien shall be the amount of the unrecovered costs. A lien under this
9 subsection shall be superior to all other liens on the property.

10 (c) The definitions set out in G.S. 130A-310.31(b) apply to this subsection. Any
11 person may submit a written request to the Department for a determination that a site
12 that is subject to this Part has been remediated to unrestricted use standards as provided
13 in Part 5 of Article 9 of Chapter 130A of the General Statutes. A request for a
14 determination that a site has been remediated to unrestricted use standards shall be
15 accompanied by a fee required by G.S. 130A-310.39(a)(2). If the Department
16 determines that the site has been remediated to unrestricted use standards, the
17 Department shall issue a written notification that no further remediation will be required
18 at the site. The notification shall state that no further remediation will be required at the
19 site unless the Department later determines, based on new information or information
20 not previously provided to the Department, that the site has not been remediated to
21 unrestricted use standards or that the Department was provided with false or incomplete
22 information. Under any of those circumstances, the Department may withdraw the
23 notification and require responsible parties to remediate the site to unrestricted use
24 standards."

25 **SECTION 5.** G.S. 143-215.3 is amended by adding a new subsection to
26 read:

27 "(g) The provisions of subdivisions (a), (a1), (a2), (a3), (a4), and (b) of G.S. 130A-
28 310.7 govern responsibility for a release, discharge, deposit, or disposal of oil,
29 hazardous substances, waste, or other contaminants regulated under this Article or under
30 Article 21A of this Chapter, including any release or discharge of petroleum from an
31 underground storage tank or an above ground storage tank."

32 **SECTION 6.** G.S. 130A-310.31(b)(3) reads as rewritten:

33 "(3) 'Brownfields property' or 'brownfields site' means abandoned, idled, or
34 underused property at which expansion or redevelopment is hindered
35 by actual environmental contamination or the possibility of
36 environmental contamination and that is or may be subject to
37 remediation ~~under any under:~~

38 a. Any State remedial program other than Part 2A of Article 21A
39 of Chapter 143 of the General Statutes or that is or may be
40 subject to remediation under the program or

41 b. The Comprehensive Environmental Response, Compensation
42 and Liability Act of 1980, as amended (42 U.S.C. § 9601 et
43 seq.)-amended, (42. U.S.C. § 9601 et seq.) except for property

1 listed on the National Priorities List pursuant to 42 U.S.C. §
2 9605."

3 **SECTION 7.** G.S. 130A-310.31(b)(10) reads as rewritten:

4 "(10) 'Prospective developer' means any person ~~who desires with a bona~~
5 ~~fide, demonstrable desire~~ to either buy or sell a brownfields property
6 for the purpose of developing or redeveloping that brownfields
7 property and who did not cause or contribute to the contamination at
8 the brownfields property."

9 **SECTION 8.** G.S. 130A-310.34(b) reads as rewritten:

10 "(b) Publication of the approved summary of the Notice of Intent in the North
11 Carolina Register and publication in a newspaper of general circulation shall begin a
12 public comment period of at least ~~60~~ 30 days from the later date of publication. During
13 the public comment period, members of the public, residents of the community in which
14 the brownfields property is located, and local governments having jurisdiction over the
15 brownfields property may submit comment on the proposed brownfields agreement,
16 including methods and degree of remediation, future land uses, and impact on local
17 employment."

18 **SECTION 9.** G.S. 130A-310.34(c) reads as rewritten:

19 "(c) Any person who desires a public meeting on a proposed brownfields agreement
20 shall submit a written request for a public meeting to the Department within 30~~21~~ days
21 after the public comment period begins. The Department shall consider all requests for a
22 public meeting and shall hold a public meeting if the Department determines that there
23 is significant public interest in the proposed brownfields agreement. If the Department
24 decides to hold a public meeting, the Department shall, at least 30~~15~~ days prior to the
25 public meeting, mail written notice of the public meeting to all persons who requested
26 the public meeting and to any other person who had previously requested notice. The
27 Department shall also direct the prospective developer to publish, at least 30~~15~~ days
28 prior to the date of the public meeting, a notice of the public meeting at least one time in
29 a newspaper having general circulation in such county where the brownfields property
30 is located. In any county in which there is more than one newspaper having general
31 circulation, the Department shall direct the prospective developer to publish a copy of
32 the notice in as many newspapers having general circulation in the county as the
33 Department in its discretion determines to be necessary to assure that the notice is
34 generally available throughout the county. The Department shall prescribe the form and
35 content of the notice to be published. The Department shall prescribe the procedures to
36 be followed in the public meeting. The Department shall take detailed minutes of the
37 meeting. The minutes shall include any written comments, exhibits, or documents
38 presented at the meeting."

39 **SECTION 10.** G.S. 130A-310.37(c) reads as rewritten:

40 "(c) The Department shall not enter into a brownfields agreement for ~~a brownfields~~
41 ~~site that is identified by the United States Environmental Protection Agency as a federal~~
42 ~~Superfund site pursuant to 40 Code of Federal Regulations, Part 300 (1 July 1996~~
43 ~~Edition) any site listed on the National Priorities List pursuant to CERCLA/SARA."~~

44 **SECTION 11.** G.S. 105-277.13(a) reads as rewritten:

1 (a) Qualifying improvements on brownfields properties are designated a special
2 class of property under Article V, Sec. 2(2) of the North Carolina Constitution and shall
3 be appraised, assessed, and taxed in accordance with this section. ~~An~~Except as
4 provided in this subsection, an owner of land who is protected from liability for
5 remediation pursuant to G.S. 130A-310.33(a) is entitled to the partial exclusion
6 provided by this section for the first five taxable years beginning after completion of
7 qualifying improvements made after the later of July 1, 2000, or the date of the
8 brownfields agreement. If a person who caused or contributed to contamination at a
9 brownfields property holds any ownership interest in the property, that person is not
10 eligible for the partial exclusion. After property has qualified for the exclusion provided
11 by this section, the assessor for the county in which the property is located shall
12 annually appraise the improvements made to the property during the period of time that
13 the owner is entitled to the exclusion."

14 **SECTION 12:** This act becomes effective 1 July 2004.

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BILL DRAFT 2003-SYz-24 [v.4] (5/6)

Water Conservation/Submeters

A BILL TO BE ENTITLED

AN ACT TO PROMOTE WATER CONSERVATION IN MULTI-FAMILY RESIDENTIAL PROPERTIES BY AMENDING VARIOUS STATE LAWS REGARDING THE USE OF SUBMETERS IN CONSECUTIVE WATER SYSTEMS IN LIGHT OF CHANGES IN POLICY RELATED TO WATER TESTING REQUIREMENTS AND WATER CONSERVATION BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 42-3 reads as rewritten:

"§ 42-3. Term forfeited for nonpayment of rent.

In all verbal or written leases of real property of any kind in which is fixed a definite time for the payment of the rent reserved therein, there shall be implied a forfeiture of the term upon failure to pay the rent within 10 days after a demand is made by the lessor or his agent on said lessee for all past-due rent, and the lessor may forthwith enter and dispossess the tenant without having declared such forfeiture or reserved the right of reentry in the lease. Where a written lease ~~establishes a monthly rent that includes~~authorizes allocation to the tenant of the cost of water and sewer services ~~under G.S. 62-110(g), the terms "rent" and "rental payment", as used in this Chapter, mean base rent only.~~ pursuant to G.S. 42-42.1, there shall be implied a forfeiture of the term upon failure by the tenant to pay for water and sewer services within 25 days after a bill is sent by the lessor or the lessor's agent to the lessee for the cost of water and sewer service."

SECTION 2. G.S. 42-26(b) is repealed.

SECTION 3. G.S. 43-33 reads as rewritten:

"§ 42-33. Rent and costs tendered by tenant.

1 If, in any action brought to recover the possession of demised premises upon a
2 forfeiture for the nonpayment of ~~rent~~, rent or nonpayment of the cost of water and sewer
3 services, the tenant, before judgment given in such action, pays or tenders the ~~rent~~
4 due, rent, the costs due for water and sewer services, and the costs of the action, all
5 further proceedings in such action shall cease. If the plaintiff further prosecutes his
6 action, and the defendant pays into court for the use of the plaintiff a sum equal to that
7 which shall be found to be due, and the costs, to the time of such payment, or to the time
8 of a tender and refusal, if one has occurred, the defendant shall recover from the
9 plaintiff all subsequent costs; the plaintiff shall be allowed to receive the sum paid into
10 court for his use, and the proceedings shall be stayed."

11 **SECTION 4.** Article 5 of Chapter 42 of the General Statutes is amended by
12 adding a new section to read:

13 "**§ 42-42.1. Water Conservation.**

14 (a) For the purpose of encouraging water conservation, pursuant to a written rental
15 agreement, a landlord may allocate the cost of providing water and sewer service to a
16 tenant. The cost allocated to the tenant cannot exceed the actual price of the water and
17 sewer service paid by the landlord, plus a reasonable administrative fee. The
18 administrative fee cannot exceed \$3.75 per month per tenant. Allocation of the cost for
19 water and sewer service by the landlord to the tenant may be computed by using
20 equipment that measures the tenant's actual use of hot water, cold water, or both, and
21 calculates the tenant's usage as a percentage of the total water used on the premises.

22 (b) All equipment used to measure water usage must comply with guidelines
23 promulgated by the American Water Works Association.

24 (c) The landlord shall maintain records for a minimum of twelve months that
25 demonstrate how each tenant's allocated costs were calculated for water and sewer
26 service. Upon advanced written notice to the landlord, a tenant may inspect these
27 records during reasonable business hours and may obtain a copy of the records at a
28 reasonable cost, not to exceed \$.25 per page.

29 (d) Bills for water and sewer service sent by the landlord to the tenant shall contain
30 all the following information:

31 (1) The amount of water and sewer services allocated to the tenant during
32 the billing period.

33 (2) Beginning and ending dates for the billing period.

34 (3) The due date for payment of the bill.

35 (4) The past due date which is the first date that a late fee can be imposed.

36 (5) Any late fee that will be applied if the bill is not paid by the past due
37 date.

38 (6) A telephone number and address that the tenant can use to obtain more
39 information about the bill.

40 (e) The landlord may not disconnect or terminate the tenant's water and sewer
41 services due to the tenant's nonpayment of the amount due for water and sewer
42 services."

43 **SECTION 5.** G.S. 42-46(d) reads as rewritten:

1 "~~(d) A lessor shall not charge a late fee to a lessee because of the lessee's failure to~~
2 ~~pay additional rent for water and sewer services provided pursuant to G.S. 62-110(g).If~~
3 ~~agreed to in a written rental agreement, a landlord may charge a tenant a fee not to~~
4 ~~exceed \$5.00 per month if payment has not been received by the landlord within 25~~
5 ~~days of billing for costs allocated to the tenant for water and sewer service."~~

6 **SECTION 6.** G.S. 42-51 reads as rewritten:

7 "**§ 42-51. Permitted uses of the deposit.**

8 Security deposits for residential dwelling units shall be permitted only for the
9 tenant's possible nonpayment of ~~base rent and additional rent costs~~ for water and sewer
10 ~~services provided pursuant to G.S. 62-110(g), services,~~ damage to the premises,
11 nonfulfillment of rental period, any unpaid bills ~~which that~~ become a lien against the
12 demised property due to the tenant's occupancy, costs of re-renting the premises after
13 breach by the tenant, costs of removal and storage of tenant's property after a summary
14 ejectment proceeding or court costs in connection with terminating a tenancy. The
15 security deposit shall not exceed an amount equal to two weeks' rent if a tenancy is
16 week to week, one and one-half months' rent if a tenancy is month to month, and two
17 months' rent for terms greater than month to month. These deposits must be fully
18 accounted for by the landlord as set forth in G.S. 42-52."

19 **SECTION 7.** G.S. 62-110(g) reads as rewritten:

20 "~~(g) For the purpose of encouraging water conservation, the Commission may,~~
21 ~~consistent with the public interest, adopt procedures that allow a lessor, pursuant to a~~
22 ~~written rental agreement, to allocate the costs for providing water and sewer service on~~
23 ~~a metered use basis to persons who occupy the same contiguous premises. A written~~
24 ~~rental agreement shall specify a monthly rent that shall be the sum of the base rent plus~~
25 ~~additional rent at a rate that does not exceed the actual purchase price of the water and~~
26 ~~sewer service to the provider plus a reasonable administrative fee. The Commission~~
27 ~~shall issue rules to define contiguous premises and to implement this subsection. In~~
28 ~~issuing the rule to define contiguous premises, the Commission shall consider~~
29 ~~contiguous premises where manufactured homes, as defined in G.S. 143-145(7), or~~
30 ~~spaces for manufactured homes are rented. Notwithstanding any other provision of this~~
31 ~~Chapter, the Commission shall determine the extent to which the services shall be~~
32 ~~regulated and, to the extent necessary to protect the public interest, regulate the terms,~~
33 ~~conditions, and rates that may be allocated for the services. Nothing in this subsection~~
34 ~~shall be construed to alter the rights, obligations, or remedies of persons providing water~~
35 ~~and sewer services and their customers under any other provision of law. The~~
36 ~~Commission shall not have jurisdiction over the allocation of the costs of providing~~
37 ~~water and sewer service by landlords to tenants pursuant to G.S. 42-42.1."~~

38 **SECTION 8.** G.S. 130A-315(d) reads as rewritten:

39 "~~(d) When a person that receives water from a public water system is authorized by~~
40 ~~the Utilities Commission, pursuant to G.S. 62-110(g), to install sub-meters and to~~
41 ~~allocate the costs for providing water service to persons who occupy the same~~
42 ~~contiguous premises, and sewer service pursuant to G.S. 42-42.1, that person shall be~~
43 regulated as a consecutive water system. The monitoring, analysis, and record-keeping
44 requirements applicable to consecutive water systems under this section shall be

1 satisfied by the monitoring, analysis, and record keeping performed by the supplying
2 water system and submitted to the Department in compliance with this section. The
3 supplying water system shall perform the same level of monitoring, analysis, and record
4 keeping that the supplying system would perform if the person that receives the water
5 had not been authorized to allocate the costs for providing water service under G.S.
6 ~~62-110(g),42-42.1~~, but the supplying water system shall not be required to perform
7 additional monitoring, analysis, and record keeping. A supplying water system is not
8 responsible for operation, maintenance, or repair of the consecutive water system."

9 **SECTION 9.** This act becomes effective 1 July 2004.

BILL DRAFT 2003-SYz-21 [v.4] (4/29)

Environmental Reports Amendments

1 A BILL TO BE ENTITLED

2 AN ACT TO AMEND VARIOUS ENVIRONMENTAL REPORTING
3 REQUIREMENTS, AS RECOMMENDED BY THE ENVIRONMENTAL
4 REVIEW COMMISSION.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Article 4 of Chapter 113A of the General Statutes is amended
7 by adding a new section to read:

8 "**§ 113A-67. Annual report.**

9 The Department shall report to the Environmental Review Commission on the
10 implementation of this Article on or before 1 October of each year. The Department
11 shall include in the report an analysis of how well the implementation of the
12 Sedimentation Pollution Control Act of 1973 is preventing the sedimentation of streams,
13 rivers, lakes, and other waters of the State. The report shall also include a review of the
14 effectiveness of local erosion and sedimentation control programs."

15 **SECTION 2.** G.S. 113A-235(c) reads as rewritten:

16 "(c) Report. – The Department shall report on the implementation of this Article
17 to the Environmental Review Commission no later than 1 ~~November~~October of each
18 year. The Department shall maintain an inventory of all conservation easements held by
19 the Department. The inventory shall be included in the report required by this
20 subsection."

21 **SECTION 3.** G.S. 113A-241(c) reads as rewritten:

22 "(c) The Secretary of Environment and Natural Resources shall report to the
23 Governor and the Environmental Review Commission on or before 1 ~~September~~
24 October of each year on the State's progress towards attaining the goal established in
25 this section."

26 **SECTION 4.** G.S. 143-215.107C(b) reads as rewritten:

1 "(b) It shall be the goal of the State that on and after 1 January 2004 at least
2 seventy-five percent (75%) of the new or replacement light duty cars and trucks
3 purchased by the State will be alternative-fueled vehicles or low emission vehicles. The
4 Department of Administration, the Department of Transportation, and the Department
5 of Environment and Natural Resources shall jointly develop a plan to achieve this goal
6 and to fuel and maintain these vehicles. ~~The Department of Administration shall report
7 on progress in developing and implementing this plan and achieving this goal to the
8 Environmental Review Commission on 1 September of each year beginning 1
9 September 2000.~~ For purposes of this section, a light duty car or truck is one that is
10 rated at 8,500 pounds or less Gross Vehicle Weight Rating (GVWR)."

11 **SECTION 5.** G.S. 143-355.1 is amended by adding a new subsection to
12 read:

13 "(g) The Council shall report on the implementation of this section to the
14 Secretary, the Governor, and the Environmental Review Commission no later than 1
15 October of each year. The report shall include a review of drought advisories issued by
16 the Council and any recommendations to improve coordination among local, State, and
17 federal agencies; public water systems; and water users to improve the management and
18 mitigation of the harmful effects of drought."

19 **SECTION 6.** The Department of Environment and Natural Resources shall
20 submit the first report required by G.S. 113A-67, as enacted by Section 1 of this act, to
21 the Environmental Review Commission on or before 1 October 2005. The Drought
22 Management Advisory Council shall submit the first report required by G.S. 143-355.1
23 as enacted by Section 5 of this act, to the Secretary of Environment and Natural
24 Resources, the Governor, and the Environmental Review Commission on or before 1
25 October 2005.

26 **SECTION 7.** This act is effective when it becomes law.

BILL DRAFT 2003-SYZ-20 [v.6] (4/29)

Environmental Technical Corrections

1 A BILL TO BE ENTITLED

2 AN ACT TO MAKE CLARIFYING, CONFORMING, AND TECHNICAL
3 AMENDMENTS TO VARIOUS LAWS RELATED TO THE ENVIRONMENT,
4 PUBLIC HEALTH, AND NATURAL RESOURCES, AS RECOMMENDED BY
5 THE ENVIRONMENTAL REVIEW COMMISSION.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 113-301.1 reads as rewritten:

8 "**§ 113-301.1. Wildlife Resources Commission obligated to make efforts to notify**
9 **members of the public who may be affected by operative provisions of**
10 **statutes and ~~regulations~~rules.**

11 (a) The Wildlife Resources Commission must prepare and distribute to license
12 agents informational materials relating to hunting, fishing, trapping, and boating laws
13 and ~~regulations~~rules administered by the Wildlife Resources Commission. The
14 materials furnished an agent should be appropriate to the types of licenses ~~he~~the agent
15 customarily handles, and in a quantity reasonably anticipated to be sufficient to meet the
16 needs of licensees obtaining licenses from the agent.

17 (b) In issuing new licenses and permits from the Raleigh office ~~by mail~~by mail,
18 the Wildlife Resources Commission must generally inform the licensee or permittee of
19 governing provisions of law and ~~regulations~~rules applicable to the type of license or
20 permit secured. In issuing renewal licenses and permits by mail, the Wildlife Resources
21 Commission must inform the licensee or permittee of any substantial changes in the law
22 or ~~regulations~~which rules that may affect the activities of the licensee or permittee.

23 (c) After adopting regulations ~~which~~that impose new restrictions upon the
24 activities of members of the public who do not normally hold licenses or permits to
25 engage in the activity in question, the Wildlife Resources Commission must take
26 appropriate steps to publicize the new restrictions. These steps may include press

1 releases to the media, informing local authorities, and other forms of communication
2 that give promise of reaching the segment of the public affected.

3 (d) After adopting new restrictions on hunting, fishing, trapping, or boating at a
4 time other than when usual annual changes in the ~~regulations~~rules affecting those
5 activities are adopted, the Wildlife Resources Commission must take appropriate steps
6 to publicize the new restrictions in a manner designed to reach persons who may be
7 affected.

8 (e) Repealed by Session Laws 1987, c. 827, s. 9."

9 **SECTION 2.** G.S. 113A-115.1(b) reads as rewritten:

10 "(b) No person shall construct a permanent erosion control structure in an ocean
11 shoreline. The Commission shall not permit the construction of a temporary erosion
12 control structure that consists of anything other than sandbags in an ocean shoreline.
13 This section shall not apply to (i) any permanent erosion control structure that is
14 approved pursuant to an exception set out in a rule adopted by the Commission prior to
15 1 July 2003 or (ii) any permanent erosion control structure that was originally
16 constructed prior to 1 July 1974 and that has since been in continuous use to protect an
17 inlet that is maintained for navigation. This section shall not be construed to limit the
18 authority of the Commission to adopt rules to designate or protect areas of
19 environmental concern, to govern the use of sandbags, or to govern the use of erosion
20 ~~coastal~~control structures in estuarine shorelines."

21 **SECTION 3.** G.S. 121-34 reads as rewritten:

22 "**§ 121-34. Short title.**

23 The title of this Article shall be known as the "~~Historic~~Conservation and Historic
24 Preservation and Conservation Agreements Act."

25 **SECTION 4.** G.S. 121-42 reads as rewritten:

26 "**§ 121-42. Citation of Article.**

27 This Article shall be known and may be cited as "~~Uniform Conservation~~the
28 Conservation and Historic Preservation ~~Agreement~~Agreements Act."

29 **SECTION 5.** This act is effective when it becomes law.

BILL DRAFT 2003-LDz-114 [v.7] (4/20)

ABC Licensees' to Recycle Beverage Containers

1 A BILL TO BE ENTITLED

2 AN ACT TO REQUIRE HOLDERS OF CERTAIN ABC PERMITS TO RECYCLE
3 ALL RECYCLABLE BEVERAGE CONTAINERS, AS RECOMMENDED BY
4 THE ENVIRONMENTAL REVIEW COMMISSION.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Article 10 of Chapter 18B of the General Statutes is amended
7 by adding a new section to read:

8 **"§ 18B-1006.1. Additional requirement for certain permittees to recycle beverage**
9 **containers.**

10 Holders of on-premises malt beverage permits, on-premises unfortified wine
11 permits, on-premises fortified wine permits, and mixed beverages permits shall
12 separate, store, and provide for the collection for recycling of all recyclable beverage
13 containers of all beverages sold at retail on the premises. A permittee has satisfied the
14 requirements of this section if it follows a recycling program that is based upon the
15 model recycling program developed by the North Carolina Alcoholic Beverage Control
16 Commission under G.S. 130A-309.14."

17 **SECTION 2.** G.S. 130A-309.14 is amended by adding a new subsection to
18 read:

19 "(m) The North Carolina Alcoholic Beverage Control Commission, with assistance
20 from the Department, shall develop a model recycling program for holders of on-
21 premises malt beverage permits, on-premises unfortified wine permits, on-premises
22 fortified wine permits, and mixed beverages permits under G.S. 18B-1001 that are
23 required to recycle beverage containers under G.S. 18B-1006.1. The North Carolina
24 Alcoholic Beverage Control Commission may adopt rules to comply with this section."

25 **SECTION 3.** This act becomes effective October 1, 2004.

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BILL DRAFT 2003-SYz-25 [v.3] (5/10)

Leaking UST Fund Liquidity

A BILL TO BE ENTITLED

AN ACT IMPROVE AND ACCELERATE PROCESSING OF CLAIMS UNDER THE LEAKING PETROLEUM UNDERGROUND STORAGE TANK CLEANUP PROGRAM, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2A of Article 21A of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-215.94Q. Liquidity Program.

(a) The General Assembly finds that the Department and the State have existing obligations under this Part, including the obligation under G.S. 143-215.94E to pay claims for reimbursement duly filed with the Department by owners, operators and landowners from the Commercial Fund and the Noncommercial Fund, which obligations impose substantial burdens on the State. The General Assembly has previously found under G.S. 143-215.94V that solvency of the Commercial Fund and the Noncommercial Fund is essential to the goals of the underground storage tank program. The General Assembly finds that:

(1) An appropriate means of managing and ensuring the solvency of the Funds is a liquidity program that will facilitate the sale of claims made against the Commercial Fund and the Noncommercial Fund by owners, operators and landowners who may require liquidity in anticipation of the ultimate payment of the claims by the Commercial Fund and the Noncommercial Fund.

(2) The most cost-effective means to provide a liquidity program is for the Department to arrange for and incur obligations to provide funding to be used to purchase claims or in lieu thereof to participate in the

1 establishment and operation of a non-profit organization that will incur
2 the liquidity obligations and purchase the claims.

3 (3) Cost-efficiency may be improved if the non-profit organization
4 operates in one or more states in addition to the State.

5 (b) The Department, acting by and through the Secretary, is hereby authorized to
6 enter into discussions with the incorporator of a non-profit corporation to be formed to
7 provide liquidity for owners, operators and landowners with claims against the
8 Commercial Fund and the Noncommercial Fund and against similar funds in one or
9 more other states and with officials of appropriate agencies or political subdivisions of
10 such other states. If the Secretary makes a written determination that he reasonably
11 expects that claimholders participating in the liquidity program will benefit from the
12 State's participation in the liquidity program, the Department is authorized to enter into
13 agreements with the non-profit corporation and other agencies or political subdivisions
14 to establish a liquidity program.

15 (c) The State may be represented on the governing body of the non-profit
16 corporation by one or more directors, as provided in the organizational documents of the
17 non-profit corporation, each of whom shall be appointed by and serve at the pleasure of
18 the Governor. The Office of Budget and Management may provide advice and
19 guidance to any director appointed under this subsection on any financial matters
20 relating to the non-profit corporation and its operation of the liquidity program,
21 including its annual budget and financial statements.

22 (d) The Department may make payments with respect to any claim made by an
23 owner, operator or landowner under G.S. 143-215.94E directly to the non-profit
24 corporation, provided that the owner, operator or landowner shall have delivered to the
25 Department a copy of an assignment showing the non-profit corporation as assignee of
26 such claim. The Department shall develop and approve the claim assignment form.

27 (e) If the Secretary is unable to make the finding described in subsection (b) of
28 this section with respect to the non-profit corporation, the Department is authorized to
29 arrange for and incur liquidity obligations and use the proceeds thereof to provide
30 liquidity either directly or through one or more non-profit organizations to owners,
31 operators or landowners holding claims against the Commercial and Noncommercial
32 Fund.

33 (f) Under no circumstances will the Department be authorized in any agreement
34 relating to the liquidity program entered into with the non-profit corporation, any
35 agency or political subdivision of any other state, any other for-profit or non-profit
36 organization or provider of liquidity obligations to commit in any way to make
37 payments in excess of the aggregate face amount of approved claims against the
38 Commercial and Noncommercial Fund purchased under the liquidity program. No
39 liquidity obligation shall constitute an obligation of the State, the Department or any
40 other agency, department or political subdivision of the State, payable from other than
41 the approved claims against the Commercial or Noncommercial Fun purchased with the
42 proceeds thereof, and nothing in this section shall be deemed to amend G.S. 143-
43 215.94J or otherwise change the limitation of the State's liability contained in that
44 section.

1 (g) The Department is directed to implement this section expeditiously. The
2 implementation of a Liquidity Program through the Department will provide a
3 significant service to the State by reducing its administrative burden of maintaining the
4 solvency of the Funds."

5 **SECTION 2.** This act is effective when it becomes law.

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BILL DRAFT 2003-LDz-115 [v.9] (4/28)

Septic System Setbacks for Pre-1977 Lots

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT A SEPTIC TANK SYSTEM THAT IS FOR A LOT PLATTED PRIOR TO JULY 1, 1977, AND THAT IS OPERATED IN SOILS THAT ARE IN SOIL GROUP 1 MAY BE LOCATED TEN FEET OR MORE FROM ANY OTHER SEPTIC TANK SYSTEM, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-335(e) reads as rewritten:

"(e) The rules of the Commission and the rules of the local board of health shall address at least the following: Wastewater characteristics; Design unit; Design capacity; Design volume; Criteria for the design, installation, operation, maintenance and performance of wastewater collection, treatment and disposal systems; Soil morphology and drainage; Topography and landscape position; Depth to seasonally high water table, rock and water impeding formations; Proximity to water supply wells, shellfish waters, estuaries, marshes, wetlands, areas subject to frequent flooding, streams, lakes, swamps and other bodies of surface or groundwaters; Density of wastewater collection, treatment and disposal systems in a geographical area; Requirements for issuance, suspension and revocation of permits; and Other factors which affect the effective operation and performance of wastewater collection, treatment and disposal systems. The rules regarding required design capacity and required design volume for wastewater systems shall provide that exceptions may be granted upon a showing that a system is adequate to meet actual daily water consumption. This subsection is subject to subsection (e1) of this section."

SECTION 2. G.S. 130A-335 is amended by adding a new subsection to read:

"(e1) A septic tank system that is for a lot that was platted prior to July 1, 1977 and that is operated in soils that are classified as Soil Group 1 may be located 10 feet or

1 more from any other septic tank system. Soils are classified as Soil Group 1 when the
2 local health department evaluates the soil texture and characterizes the soils in
3 accordance with Commission rules as sandy texture soils."

4 **SECTION 3.** This act is effective when it becomes law and applies to
5 applications for permits made on or after that date.

BILL DRAFT 2003-LHz-216A [v.6] (5/10)

Hatteras Village/Temp. Unvegetated Beach Area

A BILL TO BE ENTITLED

AN ACT TO DESIGNATE AS TEMPORARY UNVEGETATED BEACH AREAS CERTAIN OCEANFRONT AREAS ON HATTERAS ISLAND WHERE THE VEGETATION LINE WAS DESTROYED BY HURRICANE ISABEL AND THE REMNANTS OF THE VEGETATION LINE WERE BURIED BY THE CONSTRUCTION OF AN EMERGENCY BERM, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. For purposes of implementing Article 7 of Chapter 113A of the General Statutes and rules adopted pursuant to that Article and notwithstanding any provision of that Article or those rules to the contrary, there are hereby designated as temporary unvegetated beach areas those oceanfront areas on Hatteras Island west of the new inlet breach in Dare County in which the vegetation line as shown on North Carolina Department of Transportation aerial photographs dated 2 June 2003, was destroyed as a result of Hurricane Isabel on 18 September 2003, and the remnants of which were subsequently buried by the construction of an emergency berm. This designation shall continue until stable, natural vegetation is reestablished or until the area is permanently designated as an unvegetated beach area pursuant to 15A NCAC 07H .0304(4)(a).

SECTION 2. This act is effective when it becomes law and expires when a permanent rule that makes the designation set out in Section 1 of this act becomes effective.

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APPENDIX II:

*Status of Reports to the Environmental
Review Commission Required by Law*

The Microsoft Access database page could not be reproduced electronically. Please contact George Givens, Jeff Hudson, Jennifer McGinnis, or Tim Dodge at (919) 733-2578 for information on the status of reports that are required to be made to the Commission, which reports have been received, and the disposition of those reports..

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